By Mr. PROUTY: A bill (H. R. 27905) granting an increase of pension to John M. Cochran; to the Committee on Invalid Pensions.

By Mr. RUBEY: A bill (H. R. 27906) granting a pension to Addie Davidson; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ALLEN: Petition of the Association of National Advertising Managers, protesting against the passage of House bill 23417, prohibiting the fixing of prices by manufacturers of patent goods; to the Committee on Patents.

By Mr. ASHBROOK: Petition of the Massachusetts Association of Sealers of Weights and Measures, favoring the passage of House bill 23113, fixing a standard barrel for the shipment of fruits, vegetables, etc.; to the Committee on Weights and Measures.

Also, petition of the National Brotherhood of Locomotive Engineers, favoring the passage of Senate bill 5382, the workman's compensation bill; to the Committee on the Judiciary.

Also, petition of J. F. Reiser and 3 other merchants of Tuscarawas, Ohio, favoring the passage of legislation giving the Interstate Commerce Commission further power over the express companies; to the Committee on Interstate and Foreign Commerce.

By Mr. AYRES: Memorial of the Chamber of Commerce of the State of New York, protesting against any legislation proposing any change in the Harter Act, relative to the carriage of cargo by sea; to the Committee on Interstate and Foreign Commerce.

By Mr. BYRNS of Tennessee: Papers to accompany bill for the relief of the estate of Hiram Jenkins; to the Committee on War Claims.

By Mr. CALDER: Petition of the Long Island Game Protective Association, favoring the passage of House bill 36, for Federal protection to migratory birds; to the Committee on Agriculture.

By Mr. DYER: Petition of R. S. Hawes, St. Louis, Mo., favoring the passage of Senate bill 957, for the regulation of bills of lading; to the Committee on Interstate and Foreign Commerce.

Also, petition of the Whitman Agriculture Co., St. Louis, Mo., favoring the passage of House bill 25106, giving a Federal charter to the Chamber of Commerce of the United States of America; to the Committee on the Judiciary.

By Mr. GRIEST: Resolution adopted by the Vermont Association of Sealers of Weights and Measures, urging the enactment into law of House bill 23113, fixing a standard for the shipment of fruits and vegetables, etc.; to the Committee on Coinage, Weights, and Measures.

By Mr. HAMILTON of West Virginia: Papers to accompany bill for the relief of Joseph P. Jones; to the Committee on Claims.

By Mr. HENSLEY: Petition of the German-American Alliance, De Soto, Mo., protesting against the passage of Senate bill 4043, prohibiting the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. LEE of Pennsylvania: Petition of the Philadelphia Maritime Exchange, favoring the passage of Senate bill 7503, providing for a reduction on first-class mail matter; to the Committee on the Post Office and Post Roads.

By Mr. REILLY: Petition of the Connecticut Federation of Women's Clubs, New Haven, Conn., favoring the passage of the Page bill (S. 3) giving Federal aid to vocational education; to the Committee on Agriculture.

By Mr. REYBURN: Petition of the Philadelphia Maritime Exchange, favoring the passage of Senate bill 7503, reducing the postage on first-class mail matter; to the Committee on the Post Office and Post Roads.

By Mr. SLOAN: Petition of the Church of Brethren, Carlisle, Nebr., favoring the passage of the Kenyon "red light" injunction bill for the cleaning up of Washington for the inauguration; to the Committee on the District of Columbia.

Also, petition of citizens of Polk County, Nebr., protesting against the passage of any legislation looking toward the enlargement of the parcel-post zone bill; to the Committee on the Post Office and Post Roads.

By Mr. TILSON: Petition of Harry P. Bliss, Middletown, Conn., making a suggestion relative to the bill for naturalization, etc.; to the Committee on Immigration and Naturalization.

By Mr. UNDERHILL: Petition of the Federation of Jewish Farmers of America, favoring the passage of legislation establishing a system of farmers' credit unions; to the Committee on Banking and Currency.

Also, petition of the Association of National Advertising Managers of the United States of America, protesting against the passage of section 2 of House bill 23417, prohibiting the fixing of prices by manufacturers of patent goods; to the Committee on Patents.

Also, petition of a committee appointed at an informal meeting at the time of the meeting of the National Association of State Universities at Washington, D. C., protesting against the passage of Senate bill 3, for vocational education; to the Committee on Agriculture.

Also, petition of the New York Civic League, New York, favoring the passage of legislation prohibiting the shipment of liquor into dry territory for illegal purposes; to the Committee on the Judiciary.

By Mr. WICKERSHAM: Petition of the people of Wrangell, Alaska, favoring the passage of legislation to prevent the setting of traps in the tidal waters of Alaska; to the Committee on the Territories.

By Mr. WILLIS: Papers to accompany bill (H. R. 18219) granting a pension to Catherine Alspach; to the Committee on War Claims.

By Mr. WILSON of New York: Petition of the Chamber of Commerce of the State of New York, protesting against the passage of Senate bill 7208, proposing several changes in the laws of the United States relating to the carriage of cargo by sea; to the Committee on Interstate and Foreign Commerce.

By Mr. WOOD of New Jersey: Papers to accompany House bill 27873, granting an increase of pension to James G. Hagamen; to the Committee on Invalid Pensions.

SENATE.

FRIDAY, *January 10, 1913.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

ELECTORS FOR PRESIDENT AND VICE PRESIDENT.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of State, transmitting, pursuant to law, an authentic copy of the certificate of ascertainment of electors for President and Vice President appointed in the State of New York at the election held in that State on November 5, 1912, which was ordered to be filed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the House had passed a bill (H. R. 26874) making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1914, in which it requested the concurrence of the Senate.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a memorial of the officers of the Twentieth Century Club, of Washington, D. C., remonstrating against the enactment of legislation granting authority to the several States to dispose of their natural resources, which was referred to the Committee on Conservation of National Resources.

Mr. PAGE presented a memorial of sundry citizens of Middletown Springs, Vt., remonstrating against the enactment of legislation providing for the parole of Federal life prisoners, which was ordered to lie on the table.

Mr. GALLINGER presented a petition of the Woman's Christian Temperance Union of Berlin, N. H., praying that an appropriation be made for the construction of a public building in that city, which was referred to the Committee on Public Buildings and Grounds.

He also presented a petition of members of Porter Garrison, Army and Navy Union, of Washington, D. C., praying for the passage of the so-called police and firemen's pension bill, which was referred to the Committee on the District of Columbia.

He also presented a petition of the congregation of the Rhode Island Avenue Methodist Episcopal Church, of Washington, D. C., and a petition of members of the Southwest Colored Citizens' Association, of Washington, D. C., praying for the passage of the so-called Kenyon red-light injunction bill, which were referred to the Committee on the District of Columbia.

Mr. BRISTOW presented sundry papers to accompany the bill (S. 2305) providing for the adjustment and payment of accounts to laborers and mechanics under the eight-hour law, which were referred to the Committee on Education and Labor.

Mr. DU PONT presented a petition of the Chamber of Commerce of Aberdeen, Wash., praying that an appropriation be

made for the fortification of Grays and Willapa Harbors, in that State, which was referred to the Committee on Appropriations.

Mr. TOWNSEND (for Mr. SMITH of Michigan) presented petitions of the Michigan Annual Conference of the Methodist Episcopal Church and of sundry citizens of Walled Lake and Grand Rapids, all in the State of Michigan, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also (for Mr. SMITH of Michigan) presented a memorial of John A. Logan Post, No. 1, Department of Michigan, Grand Army of the Republic, remonstrating against the passage of the so-called Swanson bill for the relief of certain Confederate officers, which was referred to the Committee on Military Affairs.

TWENTIETH INTERNATIONAL IRRIGATION CONGRESS.

Mr. SMOOT. I have a copy of resolutions adopted by the Twentieth International Irrigation Congress, held at Salt Lake City, Utah, October 3, 1912. I ask that the resolutions lie on the table and be printed in the RECORD.

There being no objection, the resolutions were ordered to lie on the table and to be printed in the RECORD, as follows:

Resolutions of the Twentieth International Irrigation Congress, adopted at Salt Lake City, Utah, October 3, 1912.

We, the delegates to the Twentieth International Irrigation Congress, assembled in Salt Lake City, State of Utah, extend cordial greetings to the irrigation host throughout our country, and submit the following resolutions as a declaration of principles:

1. We hold that Federal control as between the States is essential to the equitable distribution and utilization of the water of interstate streams.

2. We approve the development of navigation throughout the rivers and lakes of the United States in accordance with the most comprehensive plan.

3. We renew our indorsement of the Newlands river regulation bill, and urge its enactment by the Federal Congress during the coming session. This bill provides for the complete control of the flood waters of our rivers in such way as to promote irrigation and drainage, the development of power, the extension of navigation, and the protection of the lowlands from destructive floods.

4. We heartily approve the Federal forestry policy, and favor its continuance and extension, and commend the cooperation of State and Federal authority in the work of forest protection.

5. We recognize the establishment of the United States Reclamation Service as second only in importance to the passing of the reclamation act in the development of the arid West. Experience has demonstrated the expediency of certain administrative changes:

5a. We believe the law should be so amended as to require that all contracts for the sale of power developed by, or in connection with, any reclamation project shall be approved by the Project Water Users' Association under such project having an interest in such contract.

5b. We believe that the profits arising from the operation of any project should be covered into the reclamation fund to the credit of such project.

5c. We favor the establishment of water users' associations under all Government projects when 20 per cent of the land thereunder shall have passed into private ownership.

5d. We recommend that complete plans and specifications of any work contemplated on any project should be delivered to the Project Water Users' Association before such work is begun, and that itemized semi-annual reports of all charges and expenditures under each reclamation project should be furnished to the officers of the water users' association under such project, and we favor the appointment of a consulting engineer under each project, to be selected by and paid by the Project Water Users' Association having access to the plans, specifications, and accounts, but without supervisory power.

6. We commend the work of the United States Geological Survey, and strongly recommend that more liberal appropriations be made by the Federal Congress and the legislatures of the States for cooperation in the prosecution of the work of the topographic and water resources branches of this bureau.

7. We commend the irrigation and drainage investigations of experiment stations, the soil and water investigations of the Bureau of Soils, and dry-farming investigations of the United States Department of Agriculture, and equally commend the work of the agricultural experiment stations and engineering departments in the several States; we favor further investigation of natural subirrigation and of irrigation by pumping; and we urge more liberal appropriations by the Federal Congress and by the States for the work and cooperation of these agencies, and for the more general distribution of the reports and bulletins recording their operations and results.

8. We believe that the administration of the Carey Act can be made more effective by the establishment of effective State supervision for all projects undertaken in any such States.

9. We deprecate the sale of abandoned military posts for wholly inadequate prices, and recommend their transfer to the States in which they may be situated for use as agricultural schools, experiment stations, or other public uses.

10. We recommend that the Congress of the United States rescind its action relative to the payment of expenses of Government officers and employees in attending sessions of the Irrigation Congress, in so far as the same relates to experts whose work bears a relation to the purposes of this congress.

11. Realizing that the opening of the Panama Canal in 1914 will greatly increase the influx of immigrants by permitting their landing on the Pacific as well as the Atlantic coast, and that the greatest benefits of foreign immigration can be attained only when the immigrants settle permanently on farms where they can quickly develop the spirit of citizenship and help to render this a Nation of homes; we commend cooperation among the various State officers in the establishment of common agencies, including expositions and other means of diffusing accurate information, to the end that immigrants may be located on the land under conditions suitable to their habits and conducive to the best development of the country.

12. We also recommend to the legislative bodies and to the various commercial organizations, particularly of the States west of the Rocky Mountains, the establishment and maintenance of bureaus at those Pacific coast ports where the immigrants will land, and where accurate information concerning agricultural lands and conditions can be supplied to them.

13. We further recommend that the Congress of the United States create a commission to investigate and report upon the colonization systems now in vogue in other countries concerning rural settlement as well as the methods of cooperative farm loan systems.

14. *Resolved*, That the International Irrigation Congress cooperate to the fullest extent with the Panama-California Exposition in producing at San Diego in 1915 the most elaborate and comprehensive international irrigation exhibit that has ever been assembled; that we invoke the aid of the legislators of the several States from the western part of the Union and of the Governments of all foreign countries interested in irrigation, to the end that this plan may be successfully consummated.

15. We invite the attention of the president and directors of the Panama-Pacific Exposition to the propriety of making provision for an adequate exhibit of irrigated farm products from the several irrigated States at the San Francisco Exposition to be held in 1915.

16. The Twentieth International Irrigation Congress proffers its sincere thanks to the State of Utah and to the city of Salt Lake, including the citizens and the Commercial Club and other organizations thereof, for the generous welcome and gracious hospitality extended to its members. The Irrigation Congress has felt at home in the city of its nativity. Its hearty thanks are tendered to Prof. J. J. McClellan and to Prof. Evan Stephens and to the Tabernacle choir for the inspiring music which graced the opening session of the congress. Especial thanks are extended to the Western Union Telegraph Co. for the unusual interest taken in advertising the congress throughout the United States and foreign countries and for special wire and messenger service afforded the congress.

Cordial thanks are extended to the Saltair Railroad and Emigration Canyon Railway for the pleasant excursions tendered to the members of the congress, and to the press of Salt Lake City for its interesting and complete reports of our proceedings. The congress is to be congratulated upon the presence at this session of the accredited delegates from the United Commonwealth of Australia, from the United States of Mexico, from the Republic of Brazil, from the Republic of Portugal, from the Republic of Guatemala, from the Provinces of Ontario, Alberta, and British Columbia, Dominion of Canada. We bespeak for future sessions of the congress addresses by eminent authorities on irrigation from these and other nations, to the end that the congress may become the clearing house for the exchange of the most advanced ideas of all nations upon subjects pertaining to irrigation.

We commend our distinguished president, Senator FRANCIS G. NEWLANDS, for his inspiring leadership and his impartial conduct in the chair. We commend Mr. Arthur Hooker for his untiring services as secretary of the congress. The Utah Board of Control is entitled to the thanks of all for the splendid success which has attended its preparations for the Twentieth Irrigation Congress.

REPORTS OF COMMITTEES.

Mr. WORKS, from the Committee on the District of Columbia, to which was referred the bill (S. 7498) fixing the punishment for cruelty to or abandonment of animals in the District of Columbia, submitted an adverse report (No. 1094) thereon, which was agreed to, and the bill was postponed indefinitely.

Mr. DU PONT, from the Committee on Military Affairs, to which was referred a petition from the Chamber of Commerce of Montesano, Wash., praying for an appropriation for the fortification of Grays and Willapa Harbors in that State, asked to be discharged from its further consideration and that it be referred to the Committee on Appropriations, which was agreed to.

PRESIDENTIAL INAUGURAL CEREMONIES.

Mr. JONES. From the Committee on the District of Columbia I report back favorably, with amendments, the joint resolution (S. J. Res. 145) to provide for the maintenance of public order and the protection of life and property in connection with the presidential inaugural ceremonies in 1913, and I submit a report (No. 1095) thereon. This is not a very long measure, and it is of some importance. It should be promptly acted on, and I ask for its present consideration.

The PRESIDENT pro tempore. The joint resolution will be read for the information of the Senate.

The Secretary read the joint resolution, and, there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The amendments were, on page 2, line 3, after the words "said period," to insert "fixing fares to be charged for the use of the same"; and on page 2, line 7, after the words "District of Columbia," to insert "and in such other manner as the commissioners may deem best to acquaint the public with the same," so as to make the joint resolution read:

Resolved, etc., That $23,000, or so much thereof as may be necessary payable from any money in the Treasury not otherwise appropriated and from the revenues of the District of Columbia in equal parts, is hereby appropriated to enable the Commissioners of the District of Columbia to maintain public order and protect life and property in said District from the 28th of February to the 10th of March, 1913, both inclusive. Said commissioners are hereby authorized and directed to make all reasonable regulations necessary to secure such preservation of public order and protection of life and property and fixing fares by public conveyance, and to make special regulations respecting the standing, movements, and operating of vehicles of whatever character or kind during said period and fixing fares to be charged for the use of the same. Such regulations shall be in force one week prior to said inauguration, during said inauguration, and one week subsequent thereto, and shall be published in one or more of the daily newspapers published in the District of Columbia and in such other manner as the commissioners may deem best to acquaint the public with the same; and no penalty prescribed for the violation of any of such regulations

shall be enforced until five days after such publication. Any person violating any of such regulations shall be liable for each such offense to a fine not to exceed $100 in the police court of said District, and in default of payment thereof to imprisonment in the workhouse of said District for not longer than 60 days. And the sum of $2,000, or so much thereof as may be necessary, is hereby likewise appropriated, to be expended by the Commissioners of the District of Columbia, for the construction, maintenance, and expenses incident to the operation of temporary public comfort stations and information booths during the period aforesaid.

The amendments were agreed to.

Mr. CURTIS. I should like to ask the Senator from Washington having charge of the joint resolution if the rates referred to apply only to the inauguration week?

Mr. JONES. That is the time they apply to.

The joint resolution was reported to the Senate as amended, and the amendments were concurred in.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

COL. RICHARD H. WILSON.

Mr. MYERS. Mr. President, yesterday during the morning hour I could not be here. I should like to have been here, but it was impossible, when the Senator from Wyoming [Mr. WARREN], from the Committee on Military Affairs, reported to the Senate favorably a substitute for the bill (S. 7515) for the relief of Col. Richard H. Wilson, Fourteenth Infantry, United States Army. That measure was thoroughly investigated by the Senator from Wyoming and was unanimously recommended by the Committee on Military Affairs. It is a small bill, which pertains to a local matter in Montana, and it is very urgent. The Senator from Wyoming and the Senator from Delaware [Mr. DU PONT] can vouch for the urgency of it. I ask unanimous consent for the immediate consideration of the bill.

The PRESIDENT pro tempore. The Senator from Montana asks unanimous consent for the present consideration of Senate bill 7515. Is there objection?

Mr. SMOOT. I should like to ask what is the nature of the bill and of the urgency?

Mr. MYERS. The nature of it is this: Col. Wilson was in charge of Fort William Henry Harrison at Helena, Mont. The sum of about $7,000—the exact sum is disclosed by the substitute reported—was stolen from the safe in the paymaster's office while Col. Wilson was temporarily in charge. It was stolen, it appears, by a couple of men who were deserters and have not been captured.

There was an investigation and Col. Wilson was thoroughly exonerated. Technically, I understand, under the law he is responsible for this money, but the War Department recommended that a bill be introduced and passed relieving him from that obligation.

All the facts are known to the Senator from Wyoming [Mr. WARREN] and the Senator from Delaware [Mr. DU PONT], the Senator from Delaware being the chairman of the Committee on Military Affairs. After investigating it and knowing the facts, they recommended the passage of the bill, and it was unanimously reported by the committee.

Mr. CRAWFORD. May I ask the Senator if the report has been printed? I do not find it on my file.

Mr. MYERS. It was made yesterday. I suppose it has been printed.

Mr. CRAWFORD. It does not seem to have been yet printed.

Mr. MYERS. I ask to have it read for the information of the Senate.

Mr. SMOOT. Not the bill, but the report.

Mr. MYERS. I ask to have the report read.

Mr. BRISTOW. Mr. President, I think this is like a great many other bills. I am somewhat familiar with it. I would like to have it go over. I must object to its present consideration.

The PRESIDENT pro tempore. The Senator from Kansas objects.

Mr. MYERS. I must say that if the bill has to take the regular course, I see no hope of its getting through at this session. I have no hope of the bill getting through the Senate and the House if it must take its regular course.

Mr. BRISTOW. It is a measure that I think ought to be considered before it is passed.

Mr. MYERS. I have asked to have it considered now, but, of course, I will have to wait.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. McLEAN:

A bill (S. 8058) providing for an increase of salary of the United States attorney for the district of Connecticut; to the Committee on the Judiciary.

By Mr. KENYON:

A bill (S. 8059) granting a pension to Sarah C. Goodrich;

A bill (S. 8060) granting an increase of pension to Isaac O. Foote; and

A bill (S. 8061) granting an increase of pension to James W. Ellis; to the Committee on Pensions.

By Mr. BRISTOW:

A bill (S. 8062) granting a pension to Alice M. Keeny; to the Committee on Pensions.

By Mr. SMOOT:

A bill (S. 8063) granting an increase of pension to Francis M. Bishop (with accompanying papers); to the Committee on Pensions.

By Mr. WORKS:

A bill (S. 8064) granting a pension to John A. Lennon (with accompanying papers); to the Committee on Pensions.

By Mr. BRANDEGEE:

A bill (S. 8066) for the relief of Pay Inspector F. T. Arms, United States Navy; to the Committee on Naval Affairs.

By Mr. STEPHENSON:

A bill (S. 8067) granting an increase of pension to George W. Vincent (with accompanying papers); to the Committee on Pensions.

By Mr. OLIVER:

A bill (S. 8068) granting an increase of pension to Annie S. Aul (with accompanying papers); and

A bill (S. 8069) granting an increase of pension to Richard T. Blaikie (with accompanying papers); to the Committee on Pensions.

By Mr. SHIVELY:

A bill (S. 8070) granting a pension to Iselo Nicely;

A bill (S. 8071) granting a pension to Daniel Hand; and

A bill (S. 8072) granting an increase of pension to William Holdaway (with accompanying papers); to the Committee on Pensions.

By Mr. BRANDEGEE:

A bill (S. 8073) repealing a provision of an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1913," and for other purposes, approved August 24, 1912; to the Committee on Appropriations.

AMENDMENT TO LEGISLATIVE APPROPRIATION BILL.

Mr. BRANDEGEE submitted an amendment proposing to reduce the number of clerks of class 2 in the Office of the Surgeon General from 26 to 24, etc., intended to be proposed by him to the legislative appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

INTERSTATE SHIPMENT OF LIQUORS.

Mr. SANDERS. Mr. President, I offer the following.

The PRESIDING OFFICER (Mr. CLAPP in the chair). It will be read.

The SECRETARY. The Senator from Tennessee proposes the following unanimous-consent agreement:

It is agreed by unanimous consent that on Monday, January 20, 1913, at 3 o'clock p. m., the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases be taken up for consideration, not to interfere with appropriation bills, and that the vote be taken on all amendments pending and amendments to be offered, and upon the bill itself not later than the hour of 6 o'clock on that day.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Tennessee? The Chair hears none. It is so ordered.

AMENDMENT OF ANTITRUST LAW.

Mr. SMOOT. Mr. President——

Mr. OWEN. I introduce a bill proposing to amend the Sherman antitrust law, giving the States an opportunity to seek redress for trade restraint. I ask that the brief accompanying the bill be printed in connection therewith, and that it, together with the bill, be referred to the Committee on the Judiciary.

The bill (S. 8065) to amend an act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, was, with the accompanying paper, ordered to be printed and referred to the Committee on the Judiciary.

INTERSTATE SHIPMENT OF LIQUORS.

Mr. SMOOT. Was there a unanimous-consent agreement just entered?

The PRESIDING OFFICER. There was. It was just agreed to.

Mr. SMOOT. I know there are a number of Senators out of the Chamber who did not expect it to come up at this time. I was in my seat, and if I had heard it read I would have objected to the unanimous-consent agreement. I therefore ask that it be reconsidered.

The PRESIDING OFFICER. The Chair understands that it is beyond the power of the Senate. The Chair may be mistaken

in that view, but the Chair thinks that it is beyond the power of the Senate to change or interfere with a unanimous-consent agreement after it is made.

Mr. SMOOT. I appeal to the Senator from Tennessee, for the Senator knows there are a number of Senators who are deeply interested in the bill and desire to speak on it. A number of them have so stated. I do not think the Senator from Tennessee ought, when but a few Senators are in their seats, ask unanimous consent to agree to vote upon a measure that he knows there is objection to. My attention was diverted for the moment by the Senator from Arkansas [Mr. CLARKE], and we were discussing a question of public business. If I had heard the request read, I would not have agreed to it unless the Senators who are interested in the measure were present and agreed to the unanimous-consent agreement. I ask the Senator from Tennessee to withdraw the request under the circumstances.

Mr. GRONNA. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from North Dakota?

Mr. SMOOT. I yield to the Senator from North Dakota.

Mr. GRONNA. As I understand the rule of the Senate, it can only be reconsidered by unanimous consent, not by a vote of the Senate.

Mr. SMOOT. It can be withdrawn by the Senator who made the request.

Mr. SANDERS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Tennessee?

Mr. SMOOT. I do.

Mr. SANDERS. I see on the floor of the Senate as many Members as there are usually here, and I have been bringing this matter up from day to day. There is no snap judgment about it in any sort of way.

Mr. SMOOT. I have never yet in the history of the Senate, since I have been here, known of a Senator asking for a unanimous-consent agreement when he knew there were absent certain Senators who had made objections before, and when the fact of their absence was called to his attention insisted upon it. I appeal to the Senator from Tennessee now to adhere to that rule.

Mr. SANDERS. Mr. President, I want to explain that some of the Senators who have objected to the agreement in the past have since then told me that they would not further object. So I do not think the point is well taken with reference to it.

Mr. SMOOT. I was in the Chamber, and I intended, at the request of a number of Senators, to object to it in their absence.

The PRESIDING OFFICER. Let the Chair say a word. There is too much confusion in the Senate. This unanimous-consent offer was made, was read very clearly and with great deliberation by the Secretary, and stated with deliberation by the Chair. The trouble is there is too much confusion in the Chamber.

Mr. SMOOT. I admit this: I was sitting in my seat at the time the order was presented talking to the Senator from Arkansas upon a question that is of interest not only to him but to the Senate. The Senator from Tennessee knows that there are a great many Senators who have stated that they did not want to agree upon a date for a vote on this bill until they had spoken upon it. I would have objected if I had heard the request made, for the reason that I have already stated to the Senator. I do not believe there was ever in the history of the Senate a unanimous-consent agreement secured in this way, and I therefore ask the Senator from Tennessee to withdraw his request.

Mr. CLARKE of Arkansas. I want to confirm, if confirmation is necessary, the statement made by the Senator from Utah [Mr. SMOOT]. I think to take advantage of the circumstance by which his attention was diverted from something that he deliberately intended to object to would be to make an unfair application of an incident that was not due to his fault. By virtue of his position as chairman of one of the committees of the Senate it became necessary for me to address an inquiry to him. The order of business under which the Senate was proceeding was the introduction of bills. I observed certain Senators on their feet with bills in their hands, which indicated to me that that order of business would continue for some minutes; but it suddenly came to an end, and this matter was disposed of without the knowledge of the Senator from Utah or of mine. I say to the Senator from Tennessee [Mr. SANDERS] that I think it would be unfair to take advantage of a circumstance that was not due to inattention or to indifference of the particular Senator who had it in his mind to object to unanimous consent with reference to the consideration of that matter. I should feel disposed to go to some length to see that he did not succeed in taking advantage of the incident if it were necessary to do so.

Mr. WORKS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from California?

Mr. SMOOT. I do.

Mr. WORKS. It seems to me that no injustice can result from this order if it continues in force. There are 10 days left to discuss this question between now and the time fixed for a vote upon it, which ought to give ample opportunity for its discussion by any Senator who desires to discuss it.

Mr. CLARKE of Arkansas. My proposition is to restore the status quo and therefore give the Senator from Utah [Mr. SMOOT] the right that he intended to exercise. I have been the innocent cause of depriving him of that right, and I do not believe the Senate is going to insist upon a condition of that sort.

Mr. MARTINE of New Jersey. Mr. President, I object——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from New Jersey?

Mr. SMOOT. I yield.

Mr. MARTINE of New Jersey. I object to the consideration of the bill at this time.

Mr. SMOOT. That is not the question.

The PRESIDING OFFICER. The objection is not well founded.

Mr. MARTINE of New Jersey. I may not have just the trend of that which went on previous to my coming into the Chamber. I am willing to vote on the question at an opportune time, but I object to its consideration at this particular time.

Mr. BRISTOW. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Kansas?

Mr. SMOOT. I yield.

Mr. BRISTOW. I am very much in favor of the bill in which the Senator from Tennessee [Mr. SANDERS] is interested, and I expect to support it; but I do think that it would be absolutely unfair to insist on this unanimous-consent agreement standing. I want to say now that if it were a bill in which I was interested, and the unanimous-consent agreement was obtained in this way, I would not support it, because the unanimous-consent agreement is a sacred agreement here in the Senate, and it should not be enforced unless every Senator has an opportunity to be heard when it is proposed. It is a very drastic practice that we have. I am speaking as one who is interested in the passage of the bill.

Mr. SMOOT. I wish to say that, so far as I am personally concerned, I have not made up my mind what action I shall take on the bill, but I promised a number of Senators, and I told them that if I were in the Chamber and they were not present, I would object to any unanimous-consent agreement. Morning business was in progress, and I did not expect such consent would then be asked. As I have heretofore stated, I was talking to the Senator from Arkansas at the time. I think it would be unfortunate if the Senator from Tennessee should insist upon the unanimous-consent agreement.

Mr. CRAWFORD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from South Dakota?

Mr. SMOOT. I do.

Mr. CRAWFORD. I do not desire to interrupt the Senator. I only want an opportunity to say that I am very much in favor of the bill; I want to assist in passing it; I want to vote for it; but I can not consent to giving my approval to the situation here, if it is insisted upon, in enforcing the unanimous-consent agreement, because with a Senator in the Chamber with his intention and his purpose fixed to object to unanimous consent, he being misled through an inadvertence and by having his attention withdrawn in the manner narrated here—to take advantage of such a situation and insist on the enforcement of the unanimous-consent agreement, to my mind, would not be fair, and it is action which will injure the enforcement by the honor of the Senate of unanimous-consent agreements in the manner which has always prevailed. I believe it will injure the custom, the practice, and the rule, if it shall be insisted upon under such circumstances.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SMOOT. I do.

Mr. BORAH. Do I understand that the request for unanimous consent has been agreed to?

The PRESIDING OFFICER. The request for unanimous consent has been agreed to.

Mr. BORAH. Then, I do not understand that the Senator from Tennessee [Mr. SANDERS] has power to change the consent agreement or withdraw it.

Mr. SMOOT. The Senator from Tennessee who made the request has a right to ask that the vote by which it was agreed to may be reconsidered, and that is what I ask the Senator now to do.

The PRESIDING OFFICER. The Chair would say to the Senator from Utah that the present occupant of the chair does not profess to be an authority on parliamentary law, but he has heard it stated time and time again in the Senate that a unanimous-consent agreement once entered into could not, even by unanimous consent, be modified or in any maner altered or changed, and the Chair certainly would want some authority to entertain such a request.

Mr. SMOOT. Mr. President, such agreements have been modified by unanimous consent time and time again since I have been in the Senate. I do not think but what the Senate can do anything that it desires by unanimous consent. They can change by unanimous consent a unanimous-consent agreement.

Mr. BORAH. Mr. President, without discussing the merits of this particular agreement, I take issue with the Senator from Utah upon that proposition. If that were true, there would be no such thing as a unanimous-consent agreement in the Senate Chamber. If a unanimous-consent agreement could be entered into here and the next day set aside when other Senators who had relied upon it were not here, there would be no such thing as a unanimous-consent agreement in this Senate.

Mr. CRAWFORD. If the Senator from Idaho will permit me a question there, Is it really a unanimous-consent agreement? A Member being present intending to object did not give his consent because his attention was diverted by another Senator, and under a proceeding that was then in order, the introduction of bills. He did not hear the statement read; he was opposed to the unanimous-consent agreement, and through his attention being so diverted he did not give his consent, but he was deprived of the opportunity of withholding his consent, although present and intending to do it. Those facts are stated here by Senators and are not in dispute. Did the Senate, then, unanimously consent to this order?

Mr. SMOOT. If I had been out of the Chamber, it would have been an entirely different proposition.

Mr. CRAWFORD. But the Senator from Utah was here.

Mr. SMOOT. I was here and the Senate was acting under the order of morning business.

Mr. BORAH. That makes it all the more difficult to get rid of this situation. If the Senator had been out of the Chamber, it might have been different; but the Senator was in the Chamber.

Mr. SMOOT. Well, Mr. President, if the Senate of the United States wants to establish this rule, and if the Senate will not by unanimous consent agree to the abrogation of this unanimous-consent agreement, I think there is a very dangerous precedent being established.

Mr. BRISTOW and Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas [Mr. BRISTOW] is recognized. The Senator from Missouri [Mr. REED] will be recognized when the Senator from Kansas concludes.

Mr. BRISTOW. Mr. President, I regard this as a very serious matter. If a unanimous-consent agreement of this kind were secured on a bill in which I was interested, I would not respect the unanimous-consent agreement; I would violate it without any hesitation, as I would have a right to do under the rules of the Senate and under my obligations as a Senator to my constituents. If it is proposed now to break down the rule of unanimous consent, we can do it.

Mr. REED. Mr. President, I desire to make an inquiry for information, because I was engaged as a member of the Commerce Committee in listening to the hearing now being held by that committee. In company with several other Senators, all of us anxious to come to the Senate, we were at that work, and remained because we relied upon the fact that the order of business was the presentation of petitions and memorials, reports of committees, and the introduction of bills. A messenger was sent down from the committee to ascertain what head the Senate was under and had reported only a moment before I left the committee room. I want to inquire, therefore, what order of business the Senate was actually under at the time this unanimous consent was asked?

Mr. SMOOT. The introduction of bills.

The PRESIDING OFFICER. The Senate was acting under the order of introduction of bills.

Mr. REED. Now, Mr. President, was unanimous consent asked to vary the order of business or was this request for unanimous consent thrust into the order of business and out of order itself?

The PRESIDING OFFICER. The unanimous-consent order was asked for separately and independently, by itself.

Mr. REED. That is to say, we were under the order of the introduction of bills when unanimous consent was asked without first getting the consent of the Senate in any way to set aside the order then before the Senate. If that is true, exactly the same situation is presented that was presented yesterday. On yesterday the Senator from Tennessee, under this same order of business, arose. He did not ask to have the order of business temporarily laid aside, but he asked for unanimous consent to have his bill taken up at some future date. I raised the point of order that the request was out of order. The then Presiding Officer, I think misapprehending the situation, ruled that the Senate could do anything by unanimous consent. That is practically true, but the unanimous consent which should have been asked was to vary the order of business, and after that had been granted then the request for the unanimous-consent agreement should have been presented.

Mr. President, without using any harsh terms, it is manifestly in the nature of a snap judgment upon the members of the Senate who were absent——

Mr. SANDERS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Missouri yield to the Senator from Tennessee?

Mr. REED. When I conclude the sentence—who were absent from the Senate and relying upon the order of business being carried out if that order of business has thrust into it something which is entirely foreign to it and is not properly introducable at that particular time.

I do not mean to say that the Senator from Tennessee meant to take an unfair advantage, but if this practice were to be indulged in, then manifestly all that any Senator can do who has service upon a committee to perform is to be here in his seat every moment, trusting nothing to the rules, nothing to the order of business, and understanding that an order may at any time be made binding upon him and the Senate, which can not be set aside by the Senate itself by unanimous consent, even with the acquiescence of the Senator who obtained the order. That is the situation in which we would be placed if the construction of the Senator from Idaho is correct.

Mr. SANDERS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Missouri yield to the Senator from Tennessee?

Mr. REED. Certainly.

Mr. SANDERS. Mr. President, I have been waiting patiently for an opportunity to disclaim any intention of taking an undue advantage of Senators. I am glad to hear the Senator from Missouri retract the statement that I did take such an advantage. I should like to see other Senators also retract. But while I was waiting for that opportunity a point of order was raised. I waited until that was decided.

I want to say that I have not been here very long, not so long as some of the Senators who are now objecting, and I may not have learned my lesson properly; but I have seen unanimous-consent agreements made here when there were not half as many Members in the Senate as there are now; I have seen unanimous-consent agreements made without any technical call for a change of the order of business; I have seen unanimous-consent agreements made here this morning and under the same circumstances, and no objection was made. So, as I have said, I may be a little premature in this matter and a little inexperienced, but I have learned what I am doing and saying from some of the older Senators who are here.

I want to say now that I positively disclaim any intention to take any advantage of anybody, and if the point of order that the unanimous-consent agreement can not be withdrawn is not sustained, I would be willing to yield to the Senators who have expressed a different view; but I should like to have the point of order made by the Senator from Idaho [Mr. BORAH] passed upon.

Mr. REED. Mr. President, I want to say to the Senator from Tennessee that I did not retract anything I said, because I intended to say nothing to reflect upon the Senator from Tennessee. What I said was that if this practice was indulged in it might lay the foundation for what we might term snap judgment, but I said that I did not want to employ that harsh a term. I will embrace this opportunity to express for the Senator from Tennessee the highest regard and to say that I do not think he has been actuated by any improper motive.

Now, with reference to the point of order, I suggest this to the Presiding Officer before he rules: It is quite one thing for the Senate, fully advised of what it is doing, to grant unanimous

consent and to then pass on to some other order of business, so that Senators who were here at the time the unanimous-consent agreement was made may, some of them, have passed from the Chamber, and then, when there is a different membership present, to ask to vary the order of business. That would be one thing; but it is the rule——

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Missouri yield to the Senator from Idaho?

Mr. REED. I will when I conclude my sentence—but it is the rule everywhere that an act can be set aside when the request is made simultaneously with the doing of the act. A judgment of court is made, and when solemnly entered the court sometimes can not set aside that judgment, but when the judge has merely announced a judgment and instantly his attention is called to a mistake he can always at the time disregard the order. So I make the point that under these circumstances, when the request comes immediately after the ruling of the Chair, it would be a very harsh and a very dangerous rule to say that something had been done which can never be altered. If time had elapsed, if the membership had changed, a different question would be presented.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Missouri yield to the Senator from Idaho?

Mr. REED. Certainly.

Mr. BORAH. I did not formally raise a point of order. I simply suggested the proposition that having made a unanimous-consent agreement I did not see how we could change it. In view of the attitude of mind of the Senator interested in this matter, I do not want to make the point of order. If he can do so, I certainly should not interpose any objection to his undertaking to do so. I have no doubt myself—and I say it in the presence of the parliamentarians of the Senate—that we are now establishing a precedent never established before; but I shall not formally raise the point of order. It would perhaps be embarrassing to the Senator who asked for the agreement for me to do so. I think the peculiar circumstances ought to exempt this proceeding from becoming a precedent.

Mr. OLIVER. I think there is a way of avoiding this difficulty without doing violence to any of our rules or any of our customs. The request for unanimous consent was made by the Senator from Tennessee. The Senator from Utah, who would ordinarily have objected to it, had his attention temporarily called to other matters——

Mr. KENYON. Mr. President, there is so much noise——

Mr. BRANDEGEE. Mr. President, I ask that there may be order. I am unable to hear the Senator from Pennsylvania.

The PRESIDING OFFICER. Does the Senator from Pennsylvania yield to the Senator from Iowa?

Mr. OLIVER. I will finish what I have to say in one moment.

Mr. KENYON. There is so much confusion in the Chamber that we can not hear.

Mr. OLIVER. It is very difficult for me to speak anyway, as I am suffering from a severe cold.

I have seen times without number when a proposition was put before the Senate and the Chair decided that it was carried, that the vote was taken again. If the Chair decided that the "ayes" had it or the "noes" had it, a second division was called for. I think this is precisely a parallel case. The Chair had no more than announced that there was no objection and that the unanimous-consent agreement was ordered, than the Senator from Utah rose and called the attention of the Chair to the fact that he had not known that the discussion was going on.

Mr. WORKS. Mr. President——

Mr. OLIVER. I think it is entirely within the power of the Senate to consider the question as not settled and, as a matter of courtesy if nothing else, to allow it to be put a second time to the Senate.

I want to say, Mr. President, that I heard this motion put. I knew it was going on, and I had no intention of objecting to it. I am rather inclined to think that when this bill comes before the Senate for action I will vote in its favor. But I think every Senator opposed to it ought to have a right to be heard, and especially to interpose objection to a unanimous-consent agreement.

Mr. GALLINGER addressed the Chair.

The PRESIDING OFFICER. Just a moment. The Chair will say to the Senator from Pennsylvania that after agreement to the unanimous consent had been announced by the Chair other business was transacted.

Mr. SMOOT. But I was on the floor asking for recognition.

Mr. OLIVER. The Clerk has just informed me——

Mr. GALLINGER. Mr. President——

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GALLINGER. Mr. President, I was unavoidably kept out of the Chamber during the morning hour or during the time intervening between 12 o'clock——

Mr. STONE. Mr. President, I should like to hear what the Senator from New Hampshire is saying.

Mr. GALLINGER. I suggested, Mr. President, that I was unavoidably kept from the Chamber when this transaction occurred. Having been out of the Chamber, if I had been opposed to this unanimous-consent agreement, to which I am not opposed, I would not have felt that I had any right after the unanimous-consent agreement was made to raise an objection, even though I had entered the Chamber at the very moment the Chair announced the result.

The Senator from Tennessee, I take it, asked for a unanimous-consent agreement in the usual way. It is done over and over and over again during the morning hour. We do not formally lay aside the order of petitions or reports of committees or bills and joint resolutions to allow Senators to make requests of this kind, and I submit to the Chair, although I apprehend it is unnecessary, that this consent having been given it can not by any possibility under our rules be vacated.

Mr. CRAWFORD. Will the Senator permit me to ask him——

The PRESIDING OFFICER. Does the Senator from New Hampshire yield to the Senator from South Dakota?

Mr. GALLINGER. Certainly.

Mr. CRAWFORD. I want to submit to the Senator—I do not know whether he was here when I before called attention to it—whether or not it is a unanimous consent of the Senate; whether or not the Senate has given unanimous consent if a Senator is present in the Chamber at the time, opposed to the unanimous-consent agreement, fully intending to make objection to it, and because he is chairman of an important committee another Senator comes to him on official business of this body and his attention is momentarily diverted while the tentative proposal is being read, and he, being present, not having heard it, and being opposed to it, immediately upon learning of it makes his protest—I wish to know whether it has, in that condition, assumed the form of a unanimous-consent agreement which absolutely bars this body from correcting what it has done through inadvertence when a Member was present at the time who did not consent.

Mr. GALLINGER. Mr. President, I apprehend there are several Senators here now who would have made objection had they been in the Chamber, but as no one in the Chamber made objection, the fact that a Senator's attention was diverted is no reason why the agreement should not stand. If we establish any other rule, we will vacate every unanimous-consent agreement that is made in this body.

I again submit that the fact that a Senator's attention was diverted is not sufficient reason for asking that a unanimous-consent agreement should be annulled. The Senator from Tennessee, as I recall it, has on several former occasions asked for this consent agreement under precisely similar circumstances that he asked this morning, and objection was made. He made another request, which was granted, and it is now asked that it shall be again submitted because some Senator did not hear it.

Now, Mr. President, all I desire to say is this: That if we are not going to observe unanimous-consent agreements when they are properly submitted and agreed to, the Chair declaring that there is no objection to the request, then we might just as well do away entirely with efforts to get unanimous-consent agreements.

Mr. SUTHERLAND. Will the Senator permit me to ask him a question?

Mr. GALLINGER. Certainly.

Mr. SUTHERLAND. Does the Senator think that if a unanimous-consent request was made, and the Chair stated that no objection was heard, and immediately a Senator was to rise and say that his attention had been for the moment diverted and asked that the question be again put, there would be any objection, parliamentary or otherwise, to its being again put?

Mr. GALLINGER. In answer to that I will say that under those circumstances, if I was in the chair, I would not again put the request simply because some Senator demanded it; and I am sure that if I undertook to do it a single objection would lie against it.

Mr. SUTHERLAND. Would not the Senator have recognized the request——

Mr. GALLINGER. I would not.

Mr. SUTHERLAND. Or a statement made by a Senator that his attention was diverted?

Mr. GALLINGER. I would not.

Mr. SUTHERLAND. And that he intended to object?

Mr. GALLINGER. I would not.

Mr. SUTHERLAND. And a request that the question be put again?

Mr. GALLINGER. I would not, any more than if a Senator had come in and stated that he had been called into the lobby, and that if he had been present he would have objected?

Mr. SUTHERLAND. If that is the case——

Mr. BRANDEGEE. I do not desire to interrupt the Senator.

Mr. SUTHERLAND. If that is the case, I should say it would be a very unsatisfactory condition. If a Senator was in his seat and intended to object to a request for unanimous consent, and had his attention momentarily distracted, and immediately made that statement to the Senate, it seems to me the Chair should, without the slightest hesitation, again put the question, just as we have seen the question put upon votes here time and time again.

Mr. BRANDEGEE. I was called from the Chamber at the time on a matter of business before the Senate and did not hear what was the unanimous-consent agreement asked for. I knew nothing about it, except that I assume it fixes a date to vote on the so-called Kenyon bill.

I have asked the Reporter if he would be kind enough to read the proceedings from the time the Senator from Tennessee made his request until the request was granted, if the Chair will allow it to be done.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Reporter read as follows:

Mr. SANDERS. Mr. President, I offer the following.

The PRESIDING OFFICER (Mr. CLAPP in the chair). It will be read.

The SECRETARY. The Senator from Tennessee proposes the following unanimous-consent agreement:

It is agreed by unanimous consent that on Monday, January 20, 1913, at 3 o'clock p. m., the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases be taken up for consideration, not to interfere with appropriation bills, and that the vote be taken on all amendments pending and amendments to be offered and upon the bill itself not later than the hour of 6 o'clock on that day.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Tennessee? The Chair hears none. It is so ordered.

Mr. SMOOT. Mr. President——

Mr. OWEN. I submit a proposed amendment to the Sherman Antitrust Act and ask that it be printed with the memorandum in relation thereto as a part of the bill.

The PRESIDING OFFICER. It will be so ordered.

Mr. SMOOT. Was there a unanimous-consent agreement just entered?

The PRESIDING OFFICER. There was; just agreed to.

Mr. SMOOT. I know there are a number of Senators out of the Chamber, etc.

Mr. CLARKE of Arkansas obtained the floor.

Mr. SANDERS. Will the Senator from Arkansas allow me to say a word?

Mr. CLARKE of Arkansas. Yes, sir.

Mr. SANDERS. Mr. President, I think the atmosphere is somewhat cleared now, and with an apology to the Senate for presenting this matter, I will pursue a different procedure. I think——

Mr. CLARKE of Arkansas. Mr. President——

Mr. SANDERS. Just a word, if you please. This is a very grave question——

Mr. CLARKE of Arkansas. I yielded for a question, and if the Senator has a question he may propound it.

The PRESIDING OFFICER. The Senator from Arkansas has the floor, and if he does not further yield——

Mr. CLARKE of Arkansas. I yielded for a question, thinking the Senator desired to ask a question; but if he desires to make a speech he will have an opportunity in about three minutes.

Mr. SANDERS. I beg pardon.

Mr. CLARKE of Arkansas. The question that is being discussed here now is broader than the question immediately involved. What would be the capacity of the Senate to deal with a unanimous-consent agreement is broader than the question with which we are now confronted.

The contention is made, and rightfully made, that no unanimous consent was given willingly. The Senator from Utah said it was his fixed purpose to enter his objection to the consideration of that application, and that he was only prevented from doing so by being called on to discharge the duties pertaining to his place by one who had a right to apply for such service; and that although present, his mind never gave consent to what was sought to be done.

For myself I would be very glad to see such an order entered. I am in favor of the bill and will vote at any time to take it up. I think the time allowed is very reasonable. It is a bill I favor. But I do not favor the Senate giving unanimous consent, directly or indirectly, under such circumstances. The dominant law of this Chamber is courtesy, and every Senator is treated with at least fairness, and when a Senator states upon his word that he intended to pursue a certain course and has been deprived of the opportunity to do so, it has been the pleasure of the Senate to promptly respond and to place him where he would have been placed had he not been casually deprived of his right in that behalf.

While I am ardently in favor of the passage of the bill, which would be advanced by acquiescence in the request of the Senator from Tennessee, I would not favor methods of that kind to further its progress.

The PRESIDING OFFICER. Will the Senator from Arkansas suspend for a moment to enable the Senate to receive a message from the House of Representatives?

A message from the House of Representatives, by Mr. Hempstead, its enrolling clerk, was received.

Mr. CLARKE of Arkansas. I shall not detain the Senate any further. I think I have stated the reasons why I think this is an exceptional case and why exceptional treatment should be applied.

Mr. SANDERS. Having explained my intention and position in this matter, I now wish——

The PRESIDING OFFICER. The Senator from Tennessee will suspend for a moment to enable the Senate to receive a message from the President of the United States.

A message from the President of the United States, by Mr. Latta, one of his secretaries, was received.

Mr. SANDERS. I wish to ask that this matter be again submitted to the Senate, giving to anyone who wishes to object an opportunity to do so.

The PRESIDING OFFICER. In what form does the Senator put his request?

Mr. SANDERS. The request I made, which I think is a very great mistake, I want to say, is that the question be submitted to the Senate again, giving opportunity for Senators to object if they wish.

The PRESIDING OFFICER. By unanimous consent——

Mr. SMITH of Georgia. Mr. President——

Mr. SANDERS. I am free to say I have been criticized so much now as to the procedure this morning that I do not wish to say just what form it should take.

Mr. SMITH of Georgia. Mr. President, not as a matter of unanimous consent, but as a matter of right, over and over again the Chair rules here that a bill has passed. We do business rapidly in that way. The Chair afterwards hears objection from a Senator and stops and says that the bill is still before the Senate. Just so in this case.

Mr. WORKS. Mr. President——

Mr. SMITH of Georgia. I do not yield quite yet to the Senator from California. Just so in this case. This unanimous-consent request was laid before the Senate, and the Senator from Utah rose as the Chair made his announcement to ask if it was before the Senate, and that was done before the Senate had passed to any other business.

The PRESIDING OFFICER. Just one moment. The Chair must remind the Senator from Georgia that the Senator from Utah rose to ask of the Chair if the Senate had considered——

Mr. SMITH of Georgia. Precisely; so that he might learn whether that had been before the Senate, and then record his dissent.

Mr. GALLINGER. And after other business had been transacted.

Mr. SMITH of Georgia. The President of the Senate, over and over again, rules rapidly on questions, and allows Senators immediately afterwards to reopen the question. It is a mode of rapid procedure that is conducted in the Senate in the nature of unanimous consent, which yields immediately afterwards to the objection of any Senator.

Now, Mr. President, it seems to me, with our lax mode of allowing requests for unanimous consent, which perhaps should be reached by a rule fixing the exact hour when they should be made, in order that we might all be present to watch against them, we should at least have the privilege, when we catch a request of that kind before the Senate has passed to something else, to ask to record objections. Otherwise a Senator could not speak to another Senator for a moment, otherwise he could not write a letter, he could not examine another measure.

In this instance the Senator from Utah, before the Senate had changed to any other subject, before anything else had been done, rose and inquired to learn the matter that had been brought before the Senate, that he might still object. I have never seen in the Senate during the past nine months a measure passed or action taken on a decision by the Chair upon a matter

pending before the Senate where a Senator at once rose and desired still to object that the Chair did not at once say the matter is still open and allow the Senator to be heard. So it seems to me the proper course of action for us to take is to declare the matter still before the Senate. If that action is taken, then, it seems to me, the course we should pursue would be to submit to the Senate the right to fix a practice—there is no rule controlling it—and that practice should be that a unanimous consent can be set aside by another unanimous consent.

Mr. GRONNA. Mr. President, I am not going to say what shall be done with this unanimous-consent agreement, but I want to testify to the transaction that occurred when the Senator from Tennessee offered the order. The Senator from Tennessee rose and asked for recognition. He was recognized by the Chair——

The PRESIDENT pro tempore. The Senator from North Dakota will suspend. The hour of 1 o'clock having arrived, under the order of the Senate legislative business must now be laid aside.

IMPEACHMENT OF ROBERT W. ARCHBALD.

The PRESIDENT pro tempore (Mr. BACON) having announced that the time had arrived for the consideration of the articles of impeachment against Robert W. Archbald, the respondent appeared with his counsel, Mr. Worthington, Mr. Simpson, Mr. Robert W. Archbald, jr., and Mr. Martin.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The PRESIDENT pro tempore. The Sergeant at Arms will make proclamation.

The Sergeant at Arms made the usual proclamation.

The PRESIDENT pro tempore. The Secretary will read the Journal of the last day's proceedings.

The Secretary read the Journal of the proceedings of the Senate of Thursday, January 9, 1913, sitting as a court.

The PRESIDENT pro tempore. Are there any inaccuracies in the Journal? If not, it will stand approved.

Mr. WORTHINGTON. Mr. President, before we proceed with the argument to-day I should like to know to what time I may speak in order that the time between now and 6 o'clock may be divided so as to give the managers their full half of the time spent in argument.

The PRESIDENT pro tempore. The Secretary has kept the time occupied by each side and will read the same.

The SECRETARY. Up to the hour of 1 o'clock to-day the House managers have occupied 4 hours and 58 minutes, the respondent's counsel 4 hours and 23 minutes.

Mr. Manager CLAYTON. Mr. President, I beg to say that I was very particular the other day in stating in the opening and before agreeing to this arrangement, in response to an inquiry addressed to the managers by the Chair, that seven hours and a half for the discussion of this question accorded to the managers would be acceptable to the managers. As I understand it, Mr. President, that interpretation of the allotment of time was agreed to by the Chair, and it was the understanding; and therefore, Mr. President, I am constrained to ask the Senate to accord to me not a division of the remainder of the time, but the time which I have reserved, to wit, 2 hours and 32 minutes. The Chair will readily perceive——

The PRESIDENT pro tempore. The manager will permit the Chair to state that he will make the necessary order in the matter.

Mr. Manager CLAYTON. It was only in reply to the suggestion of the respondent's counsel, who sought to cut me off from that.

The PRESIDENT pro tempore. The Chair is not criticizing the manager, but he simply desires to accommodate his wishes.

Mr. Manager CLAYTON. That is entirely satisfactory.

Mr. SMOOT. I move that the Senate continue in session as a Court of Impeachment this day long enough after 6 o'clock to give both sides the allotted time, seven hours and a half.

The PRESIDENT pro tempore. It is moved by the Senator from Utah that the Senate to-day shall continue in session long enough after 6 o'clock to give to the managers and also counsel for the respondent the seven hours and a half originally contemplated. Without objection, it is so ordered.

Mr. WILLIAMS. What was the request? To remain in session to-night?

The PRESIDENT pro tempore. The request was that after 6 o'clock, which is the ordinary hour for adjournment, the Senate shall stay in session long enough to give each side the time originally contemplated, the difficulty having arisen out of the consumption of a part of the time by other matters. It will probably not be over half an hour.

Mr. WILLIAMS. How long will we be kept in session after 6 o'clock?

The PRESIDENT pro tempore. About half an hour, under the order adopted on motion of the Senator from Utah. Mr. Worthington has the floor.

CONTINUATION OF ARGUMENT OF MR. WORTHINGTON OF COUNSEL FOR RESPONDENT.

Mr. WORTHINGTON. Mr. President and Senators, I am not a prophet, but I venture to guess that it will not be necessary, as far as the time I shall occupy is concerned, to extend the time of the session beyond the usual hour of 6 o'clock, giving to the manager who is to close the argument his full remainder of the seven hours and a half for his side.

I want for a moment to recur briefly to the questions of law which I discussed yesterday.

A great many text writers have been cited by the managers, and some of them say that certain offenses which should constitute impeachable offenses are not crimes and therefore would not be indictable. But as to most of the offenses of that kind to which the text writers and managers refer I think it will clearly appear from the authorities to which I referred the Senate yesterday that they are criminal by the common law as misconduct in office. As to several of the others they distinctly state that where an officer is guilty of maladministration—not referring to judges alone, but all civil officers—whether indictable or not, he should be impeached; whereas we all know that in the Constitutional Convention, as was read yesterday—it was doubtless unnecessary to read it to anybody in the Senate—the word "maladministration," which was first offered, was struck out because it was too general and would practically allow all civil officers to be removed at any time at the pleasure of the Senate, and the words "high crimes and misdemeanors" were substituted.

But, taking the textbooks, I do not see that any comfort can be gathered by the managers from considering all that they say on the subject. I have here an extract from Story on the Constitution, on whom the managers seem most to rely in this connection to support their claim that it is not necessary that an officer who is impeached by the House should be charged with an offense which is indictable. I shall read a paragraph from Story on this subject, which the managers did not read, from section 797 of his work on the Constitution. In what was read by the managers, Story states his conception of the old English cases on impeachment. Then he goes on to say—and to this I ask the particular attention of Senators—

> Resort, then, must be had either to parliamentary practice and the common law, in order to ascertain what are high crimes and misdemeanors, or the whole subject must be left to the arbitrary discretion of the Senate for the time being. (Story on the Constitution, Vol. I, p. 581.)

That the matter must be left to the arbitrary discretion of the Senate is what the managers now claim, so far as any of them have addressed themselves to this question up to this time.

> The latter is so incompatible with the genius of our institutions that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties. (Story on the Constitution, Vol. I, p. 581.)

In the same connection he characterized as harsh and severe the English authority or rules which he referred to in the passage which has been read and is here relied upon by the managers.

In another place, section 798, I read one clause on page 582:

> It is remarkable that the First Congress, assembled in October, 1774, in their famous declaration of the rights of the Colonies, asserted—

Quoting from the declaration of 1774—

> that the respective Colonies are entitled to the common law of England, and that they are entitled to the benefit of such of the English statutes as existed at the time of their colonization, and which they have by experience, respectively, found to be applicable to their several local and other circumstances.

That is the end of the quotation. Story goes on:

> It would be singular enough if, in framing a national government, that common law so justly dear to the Colonies as their guide and protection should cease to have any existence as applicable to the powers, rights, and privileges of people or the obligations and duties and powers of the departments of the National Government. If the common law has no existence as to the Union as a rule or guide, the whole proceedings are completely at the arbitrary pleasure of the Government and its functionaries in all its departments. (Story on the Constitution, Vol. I, p. 583.)

Story was there dealing with the proposition to which I referred yesterday, that since the Supreme Court had decided that there are no common-law offenses in the Federal courts generally, therefore there is no common law upon which the

Senate can act in cases of impeachment; and dealing with that very subject he reaches the same conclusion which we had reached in our argument on that point.

As to the State cases I shall not undertake to deal with them especially, but I want also to read a paragraph or two from the language of that great jurist Lemuel Shaw when he was chairman of the managers in the Prescott case in Massachusetts, opposed to Daniel Webster, who represented the respondent. He had been referring to the removal by address, which, as we all know, was a proceeding by which any civil officer could be removed in England, and can to-day be removed in most of the States, without charging him with any crime or offense and putting him only in that plight which any civil officer is in to-day if the President happens to turn him out. I am reading from page 118 of the Prescott Trial. He says:

The two modes of proceeding are altogether distinct, and in my humble apprehension were designed to effect totally distinct objects. No, sir; had the house of representatives expected to attain their object—

That is, the House of Representatives of Massachusetts—

by any means short of the allegation, proof, and conviction of criminal misconduct an address and not an impeachment would have been the course of proceeding adopted by them. (Prescott's Trial, 1821, p. 182.)

He is speaking for the managers, of whom he was the chairman. He says that if the managers had been sent to the Senate and had "expected to attain their object by any means short of the allegation, proof, and conviction of criminal misconduct, an address and not an impeachment would have been the course of proceeding adopted by them."

We readily therefore agree that here is no question of expediency, of fitness or unfitness, but one of judicial inquiry of guilt or innocence. We make no appeal to the will or discretion, but address ourselves solely to the understanding, the judgment, and the consciences of the judges of this honorable court. We also cheerfully accede to the proposition that this is a court of justice of criminal jurisdiction, possessing all the attributes and incidents of such a court.

Further along on the same page:

The general principle of law, upon which we rely in support of this prosecution, is that any willful violation of law, or any willful and corrupt act of omission or commission, in execution, or under color of that office, the duties of which the respondent has sworn to perform and discharge faithfully and impartially according to the best of his abilities and understanding, agreeable to the constitution and laws of this Commonwealth, is such an act of misconduct and maladministration in office as will render him liable to punishment by impeachment. Such oath of office, being prescribed by the supreme law, in addition to the religious obligation upon the conscience of the officer, imposes a legal obligation as binding and explicit as if the constitution had provided in other words that every officer acting under it, should so perform and discharge the duties of his office under pain of impeachment. But what those duties are must be a subject of inquiry in each particular case, and must be ascertained by reference to express laws relating to such office or to the principles of the common law, and those general and obvious rules resulting from the nature, purposes, and powers of the office in question.

That was the statement made by Judge Shaw, on behalf of the managers in that case, as to what they claimed under a constitution which used the word "maladministration" as one of the things for which an officer could be removed. If you apply that doctrine to this case, then by what these managers say over and over again and have admitted during the arguments in this case this respondent must be acquitted, because they do not charge anything of the kind.

Now, Mr. Manager HOWLAND referred to the Barnard case in New York bearing upon this doctrine, and I understood him to say there was a certain part of the charge which it was argued did not amount to an indictable offense, and that notwithstanding that the respondent was convicted. Either I misunderstood him or he has misunderstood the case. What happened was this: There was a certain article of impeachment which made a general charge and then gave a long list of specifications under that charge, some 20 in number, as I remember. As to one of those specifications, it was argued at great length that the respondent should not be convicted upon that because that specification did not set forth an indictable offense. But no vote was ever taken upon that specification, and that question was not passed upon at all by the court. When the end came a vote was taken upon the general charge in that article with all its specifications, and Judge Barnard was convicted of the general charge, so that it made no difference whether the particular specification referred to did or did not charge an impeachable offense.

Some of the illustrations used in the briefs which I had the pleasure of reading last night, which have been submitted by Mr. Manager NORRIS and Mr. Manager DAVIS, contain the suggestion that a judge may decide cases contrary to his honest conviction, and that that would not be an indictable offense.

I know not where the managers find that law; they do not find it in the common law of England or of any place in this country, because if a judge does intentionally disregard his duty and decides a case or makes any order in a way he believes to be wrong, he is guilty of an indictable offense and could from time immemorial be punished for it. So they go on to say he may decide from partiality or, as one of the learned managers says, unblushingly use partiality. Of course that is nothing but bribery. Or he may be drunk on the bench; that is disorderly conduct, as in the Pickering case. Or he may be guilty of usurpation of power; I confess that that is a thing which appeals to me and appeals to a great many people in this country; there have been some recent events which have brought it to the attention of everybody. If a judge does intentionally send a man to jail, usurps that power, not believing that he has the right to do it, then, of course, he has committed an indictable offense as well as an impeachable offense. That was the whole question in the Peck trial, where a lawyer who appeared before Judge Peck was sent to jail and was suspended from practice for 18 months for having criticized a decision of the judge in his case. The whole question in the case was whether the judge honestly believed he had the right to do that. His counsel never pretended that Judge Peck was not guilty of an indictable and impeachable offense if he had sent Lawless to jail believing that he did not have the right to do so.

Just a word about the law relating to articles 7, 8, 9, 10, and 11. The Barnard case is one in which the court decided that since the respondent in that case was holding the second term of the same office, he might be impeached for what he did in the first term; but in the report of that case, on pages 158 to 160, is a reference to another case in the same court—the case of Fuller—from which I quote:

Proceedings which were taken in the assembly upon an inquiry made into the judicial conduct of one Phil. C. Fuller, the house directed the judiciary committee to inquire and report:

First. Whether a person could be impeached who at the time of his impeachment was not the holder of an office under the laws of this State.

Second. Whether a person could be impeached and deprived of his office for malconduct or offenses done or committed under a prior term of the same or any other office.

Presenting what I suppose is intended to be a distinction between many cases and the present on the part of my learned adversary, founded upon the fact that Justice Barnard was an incumbent of this office from the term preceding the 1st of January, 1869. I do not well perceive how that circumstance could give foundation for any discrimination, because the principle upon which the doctrine is founded—that you can not impeach for acts committed previous to the tenure of the office—is that the new election, signifying the voice and the judgment of the people, purges and purifies the offender from the contamination of any previous conduct or offense. That it is an expression of the will of the people, not only a judgment upon his qualifications but an expression of that will; that as he is and whatever he may be he is by that sovereign voice selected as a delegate to represent their power in the office to which he may be selected.

Mr. Weeks, from the judiciary committee, reported that:

"The only clause in the constitution relating to judgment upon impeachments provides that judgments in such cases shall not extend further than the removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under this State, but the party impeached shall be liable to indictment and punishment according to law.

"From this and from the theory upon which our Government is based the committee have come to the conclusion:

"First. That no person can be impeached who was not at the time of the commission of the alleged offense and at the time of the impeachment holding some office under the laws of this State.

"That the person impeached must have been in office at the time of the commission of the alleged offense is clear from the theory of our Government, viz, that all power is with the people, who, if they saw fit, might elect a man to office guilty of every moral turpitude, and no court has the power to thwart this their will and say he shall not hold the office to which they have elected him. A contrary doctrine would subvert the spirit of our institutions.

"It is equally clear from the tenor of the constitution that the person must be in office at the time of the impeachment. This instrument provides but two modes of punishment, viz, removal from office, or removal or disqualification to hold office. In either mode of punishment the person must be in office, for removal is contemplated in both cases, which can not be effected unless the person is in office.

"The courts are the only tribunals that have jurisdiction over a delinquent after his term of office has expired to punish him for offenses committed in the discharge of the duties of his office."

The committee have further come to the conclusion—

"Secondly. That no person can be impeached and deprived of his present term of office for offenses alleged to have been committed during a prior term of the same or any other office.

"Neither by the constitution nor by our laws is there any period limited in which an impeachment may be found. It is but fair, therefore, to infer that the intention was to confine the time to the term of office during which the offenses were alleged to have been committed; indeed any other conclusion would lead to results which could not be sustained, for who can say but that the people knew of this malconduct, these offenses, and elected the individual notwithstanding? True, an extreme case might be put of fraud committed on the last day of the term of an office, to which office the individual might be immediately reelected, yet who could say this was not known to the people? How is the matter to be settled? The mere statement of the question shows the dilemma in which we would be placed at every election if the tenure or stability of an office depended upon a legal inquiry as to whether the people knew the characters of the individuals they had elected to office and had exercised a proper discretion.

"However much it may be desired to have men of high integrity and honesty to fill our public offices of trust and honor, yet by our constitution and the fundamental principles of our Government no particular scale of integrity, honesty, or morality is fixed. No inquisition as to what character had been can be held; it is enough that the peo-

ple have willed the person should hold the office, and the courts, which are but the mere creatures of the public, will have no power to interfere.

"The constitution provides, as we have seen, that a person can not be impeached after he is out of office. Then, if the same person should be reelected to the same office a year afterwards, would this right of impeachment be revived? In fine, by his reelection would he incur any other liabilities or acquire any other rights than those incident to his present term of office? We think a moment's reflection would convince each person that it could not.

"Again, could an officer be deprived of his present office by impeachment for malconduct in another and different office, or even the same office, 20 years before his present term commenced? If not, could he after one year or one moment had elapsed? Where is the difference in the principle? The time is nothing. The question is, Is he out of office? It matters not if he is the next moment inducted in.

"The committee think it clear, in every light they have been able to view this matter, that the constitution intended to confine impeachments to persons in office and for offenses committed during the term of the office for which the person is sought to be removed. In pursuance of this conclusion the committee recommend to the house the adoption of the following resolution:

"*Resolved*, That the committee of investigation into the official conduct of State officers and of persons lately, but not now, holding office, be instructed—

"1. That a person whose term of office has expired is not liable to impeachment for any misconduct under section 1, article 6, of the constitution.

"2. That a person holding an elective office is not liable to be impeached, under section 1, article 6, of the constitution, for any misconduct before the commencement of his term, although such misconduct occurred while he held the same or another office under a previous election."

Counsel also referred to the Belknap case. That was a case in which a majority of the Senate decided that Belknap could be impeached, notwithstanding that he was not an officer when he was impeached. But in that case it appeared, as I stated yesterday and as everybody who looks at the record will see, that Belknap was over in the room of the Judiciary Committee of the House at 10 o'clock in the morning of a certain day, when that committee was closing the taking of testimony in his case, and he there learned that a resolution was that day to be reported to the House when it should meet recommending his impeachment. He thereupon went directly to the White House—these are admitted facts—saw President Grant, tendered his resignation, and had it accepted. So that he was out of office before the House met and before there was an opportunity on the part of the Judiciary Committee to report the resolution favoring his impeachment. Afterwards, but on the same day, it was passed by the House. The managers, when they came here, put in the plea that even if an officer ordinarily could not be punished for a crime committed in office after his term of office had expired, he could be punished after he resigned for the purpose of escaping punishment. How many of the Senators who voted that he might be impeached did so on that ground, and how many on the ground that an officer may be impeached at any length of time after he is out of office, I do not know and nobody can tell to this day.

There was another case which has not yet been referred to, a very interesting case in this connection. When Mr. Schuyler Colfax was the Speaker of the House, he, with a number of other Members of the House, became involved in what was called the Credit Mobilier scandal.

It appeared in the testimony that was taken by the investigating committee of the House in that case that he received from Oakes Ames a number of shares of the stock of a company which was largely interested in getting legislation through Congress for the construction of the Union Pacific Railroad. His guilt appeared to be manifest by the ex parte testimony which was taken, and the House took steps looking to his impeachment. He was, however, then Vice President of the United States; he was no longer Speaker of the House; but had become Vice President and presided here. The matter was considered by the Judiciary Committee, but no action was taken upon it, because it appeared that the term of the House was about to expire and his office as Vice President was about to come to an end, and so they dropped it. There was no reason for dropping it if the contention of the managers is correct about that matter.

There is another thing that I do not like to refer to here, but I feel obliged to do so, notwithstanding it calls to mind the misdeeds of one who was once a Member of this body and has now gone to his last rest. The gentleman of whom I speak was once cashier of a bank in this city. While he was cashier he embezzled a sum of between twenty-five and thirty thousand dollars. His friends or family made up the amount and he was never prosecuted; just why I do not know, and it does not matter, but he went out to a far Western State, and in due course of time he had so rehabilitated himself and so conducted himself that he came to Washington as a Member of this body—as a Senator from the State of North Dakota. In the Senate, while he was here, the question was raised whether he should not be expelled because he had committed this offense, notwithstanding that it was committed before he was a Senator. The matter was discussed at great length by Senators on either side. I have not the reference here to the place in the RECORD in which that debate is recorded. The matter was never even brought to a vote, the argument being made, and apparently being unanswerable, that for anything that he had done before his State sent him to this body he could not here be held accountable.

It certainly would be a remarkable thing if this doctrine should be established, because in that case every man who has been in public life at any time should take notice that he remains liable to impeachment so long as he lives. The President of the United States, for instance, held four or five different offices under this Government before he became President, and, according to this doctrine, he could now be impeached for anything he did while he was Solicitor General, or governor of the Philippines, or Secretary of War, and, upon conviction, he would be forever debarred from holding any office of honor, trust, or profit under the United States, even that which he now holds. And that might have been done in the case of his predecessor, who was formerly Assistant Secretary of the Navy, if anybody had chosen to take that step while he was President. So that any man who has held one or more public offices is always at the mercy of somebody who may stir up some offense which he is alleged to have committed at some other period and in some other office and bring him to the bar of the Senate to defend himself years after his witnesses are dead, his papers are lost, and his memory fails to record the transaction.

I pass from that, and I proceed again to discuss the merits of this case, the articles of impeachment, which have been left to me particularly to consider. I was referring to article 6 yesterday when the adjournment came, and I want to add a few words about that article.

I know how difficult it is for Senators to carry these different articles and transactions and the evidence which relates to them in their minds. That was a case in which it was charged in four or five lines of the article, without any specification whatever, that Judge Archbald had sought to use his influence as a judge to induce the Lehigh Valley Railroad or the Lehigh Valley Coal Co., which was a part of that railroad company, to purchase the interest of certain persons, called the Everharts, in the mine which that company was working.

It appears that Mr. Williams took Mr. Dainty, who was the person concerned in that transaction, to Judge Archbald's office and told him that Judge Archbald wanted to see him. At that time, as the evidence discloses and as it will appear when I come to consider article 1, Judge Archbald and Williams had a letter from Capt. May stating that he would recommend a sale of the interest of his company in the Katydid dump. They were stopped in that transaction because of the outstanding claim of the Everhart heirs, from whom they had no writing or authority. Those heirs were scattered in various parts of the United States and held small fractional interests in the Katydid dump. Dainty says that when he arrived at the judge's office the judge told him that he wanted to see him about getting the interest of the Everhart heirs in the Katydid dump. It appears from Dainty's testimony and from the testimony of other witnesses that Dainty was in close communication with the Everhart heirs and was the one person in that region who would be likely to get them to dispose of their interest in the Katydid dump. After the judge had told him that that was what he wanted, Dainty said, "Judge, I should like to see Mr. Warriner; they want to get the Everhart interest in their property, too, and I should like to have them buy the Everhart interest and let me attend to it." Of course, he was after his commission for bringing about a sale of the interests of the Everhart heirs. The judge said, "Why do you not go and see Mr. Warriner?" Dainty replied, "I do not know Mr. Warriner," and he asked the judge to see Warriner and make that representation for him. The judge, with that kindness with which he acted for all the people who came to him to ask him to help them, in consideration, evidently, of the fact that he was asking Dainty to get him the Everhart interest in the Katydid dump, offered to see Mr. Warriner and ask him to let Mr. Dainty get him the Everhart interest in the property of Warriner's company. He went there and had one conversation, at least, with him, and possibly two, although the evidence is not clear on that point, and was told that the coal company would buy the Everhart interest whenever they could, paying whatever they had paid for the other proportionate interests of the same kind. There the transaction ended, and there was nothing more of it.

Now, it should be borne in mind that at that time, as Mr. Warriner testifies, it was not proposed or suggested that they

would pay any more than they had paid for the other interests. They would only pay in the same proportion. They were paying the outstanding Everhart interests their royalties, and if they paid them the money which was due them, some $30,000, they would stop paying the royalties. So it was simply a question of royalties against interest, and the two things amounted to the same thing; so it was not a matter which concerned Mr. Warriner's company to any great extent.

The Morris & Essex tract, which was referred to in connection with the testimony of Mr. Dainty, is a tract of land which is owned by the Lehigh Valley Coal Co., but which was not on or near its lines, so that it could not possibly work it.

I want, next, to take up the culm-dump cases. I doubt if there is a Member of this body who is not now impressed with the fact that Judge Archbald voluntarily and intentionally, after he became a member of the Commerce Court, went to work to do a wholesale business in culm dumps. That matter has been brought up in such a way, has been published so often, and so much has been said about it by the managers and otherwise, that it seems impossible that anybody should fail to have that impression. So it becomes my duty, as it is my pleasure as one of the counsel of Judge Archbald, to show to the Senate now from the testimony in the case and the correspondence with regard to it, that the statement is absolutely without a particle of foundation. I know that is a broad statement to make, but I make it unhesitatingly, and I expect to make good my word.

It was said in the opening statement of the managers and is charged in article 13 that Judge Archbald got numerous contracts and numerous agreements as to coal properties, and that in all of them he concealed from everybody, except the officials of the railroad company with which he was dealing, the fact that he was interested; that the railroad company knew it, and nobody else did. I say again there is not a particle of foundation for that statement, and I propose to make good those words. As a matter of fact, instead of Judge Archbald having made up his mind when he went on the Commerce Court bench that he would go into culm-dump transactions or other transactions with railroad companies which had cases or might have cases before the Commerce Court, the fact is that there are just two of those cases with which he had any connection. In one he took the initiative steps at the instance of a man who was sent to him by William P. Boland to get him to do it, and in the other instance he did it because he was seeking to purchase a dump which was held by a private concern with which no railroad company had the slightest connection; and it was suggested to him in that connection that instead of getting that dump by itself it would be better to get one near by which was under lease by a railroad company.

I repudiate the suggestion that has been made here by one of the managers that Judge Archbald, through his counsel, is seeking to hide behind the men who made these suggestions to him. It was said that I had made that remark in my opening statement in this case. I challenge the manager who is to conclude the argument of this case to find a suggestion or word which justifies that statement. What I did say was that it was not true, as was charged in the thirteenth article, that the respondent, being on the Commerce Court, conceived the idea of compelling the railroad companies which might have cases before him to make good bargains with him. Not a single instance of that kind occurred. In each of the two cases in question the idea of making the application originated in other brains, and the suggestion was made to him. What he did after that he is responsible for; but no one can read the testimony in this case and say that Judge Archbald himself conceived the idea and then acted accordingly.

Now, taking up these culm dump transactions, which are illustrated by the maps which are upon your wall, I am going to take up, first, article 3, which deals with a dump shown on the map which is on the left as we look at the door. That dump is known as Packer No. 3. On that map there are quite a number of dumps located. In the lower part of the map, in the middle, is what is called the Oxford washery and the Oxford dump, and right in the middle, where the black spot is, which you can see from all over the Chamber, is Packer No. 4. Up farther to the left is Packer No. 2, and to the right you will see a conglomeration of lines. There is a big letter "B" there; and to the left of that is a small dump which is eastern Packer No. 4, and to the right is Packer No. 3 dump.

I now take up the story as it is shown by the testimony in this case, as manifested by the written correspondence in evidence and by the testimony of witnesses that the managers have produced. The first witness on the subject to whose testimony I refer is John Henry Jones, who had heard of the Oxford dump from a man named Gray. That Oxford dump was the one which was controlled by a concern known as the Oxford Coal Co., and worked by another concern—Madeira, Hill & Co. I ask Senators to bear in mind that no railroad company had any connection with it whatever; it was a private concern; and Judge Archbald had just as much right to go and deal in regard to it as he had to go down to the grocery to buy supplies for his house.

John Henry Jones, after hearing of this dump, mentioned it to Judge Archbald, and requested the judge to get an option on it so that they might together see if they could make a sale of it and make some profit out of it. Judge Archbald accordingly communicated with the people who owned that dump, and he received a written option. There are a series of letters, first, one giving an option, and then others extending it, which will be found on pages 1203 and 1204 of the record. Then he and John Henry Jones tried to sell that dump. Jones tried to sell it to Mr. Peale, and the letter is in evidence by which he tried to get Peale to buy it, and it is found on page 1016 of the record.

Then, John Henry Jones says that Thomas H. Jones, who is known here as Star Jones, "asked me if I knew of a dump, saying he had a purchaser; and I told him about this Oxford dump"; and that is where Thomas H. Jones, or Star Jones, as he is known in this case, got into the matter. Here is his testimony:

John Henry Jones told me that the Oxford dump was for sale, and that he got his information from Judge Archbald. I offered it for sale, and it was turned down because it was too rocky.

John Henry Jones went on the dump, and this is his testimony, on pages 360 and 367:

The superintendent of the Oxford dump told me if I could get a dump across the way—

Across the creek, it means—

that a fair operation could be made of it by bringing that coal to the Oxford washery. I examined the dump, and when I got back from that examination I told the judge that if Packer No. 3 could be obtained, it would be a fair operation.

That is the way Judge Archbald knew that there was such a thing in existence as Packer No. 3.

Mr. President, I now have demonstrated, as I started out to demonstrate, that the fact that there was such a dump as Packer No. 3 and that it would be a good thing to operate it was brought to the attention of Judge Archbald by another person with whom he was in cooperation on another dump, with which only private parties were connected.

The next thing that appears in the record in this connection is a letter from the judge to a man named Lathrop, dated August 1, 1911, which is found on page 643 of the record:

SCRANTON, *August 1.*

W. A. Lathrop, superintendent Lehigh Valley Coal Co.—

That shows how intimately Judge Archbald was concerned with this railroad company, because Lathrop had not been superintendent of that coal company for about 10 years. He wrote to Judge Archbald that he had not anything to do with it, and that Mr. Warriner was now the proper man to write to. But in that letter Judge Archbald says:

I have an option on this [Oxford] washery, and the culm dump which goes with it is not quite what it ought to be and ought to be strengthened with another.

So, you see the correspondence shows he was doing exactly what the oral testimony shows he was doing. He had been dealing for the Oxford; he had been told it was a good thing to get the Packer No. 3 to work with it; and he writes to the man who he supposed at that time was superintendent of the Lehigh Valley Coal Co. and asks if anything can be done about it.

The next is a letter to Mr. Warriner, which is precisely the same thing. The judge has found out now that Mr. Lathrop has nothing to do with it, and he writes to Mr. Warriner on the 11th of August, 1911, saying:

In negotiating with regard to that [Oxford] washery I find that it needs an additional dump, or will in the near future, and I am therefore writing to inquire whether any arrangement could be made with your company for one or more of the dumps which I have referred to.

Next you find a letter from the judge's nephew, Col. Archbald, the engineer of the Girard estate—and here I must remind the Senators that all these packer dumps belonged to the estate of Mr. Girard, the millionaire, who died and left a great charitable bequest to the city of Philadelphia. That estate is now managed by a corporation called the Board of City Trusts. That corporation had leased all these culm dumps, these Packer dumps, and a vast amount of other property to the Lehigh Valley Coal Co., and the lease was to expire at the end of this year. Col. Archbald was the nephew of Judge Archbald and was the engineer of the Girard estate. The judge wrote to him on the 14th of August, 1911, as to the Oxford, saying:

I understand that lease runs out in two years. Will the Girard estate extend the time to cover the life of the dump?

This is a quotation from his letter:

I have written to the Lehigh Valley people to see whether I could get any arrangement with them about one or other of the adjoining dumps, but have not heard from them.

And, next, on the 27th of September, 1911, Mr. Warriner himself writes Judge Archbald—

I now have a report from our superintendent on the situation, and I think it will be possible for us to accede to your wishes.

And he suggests an interview between Judge Archbald and his, Mr. Warriner's, superintendent.

I ask you to observe from that that Mr. Warriner, when he had this application from Judge Archbald, a judge of the Commerce Court, in a letter written on Commerce Court paper, did not send for the judge to come over and have a talk with him and see how much money he wanted to make out of that dump. He made inquiries of his superintendent as to whether Packer No. 3 was one that he had better hold on to, and he suggested that the judge come over and have a talk with him and his superintendent. He says, further, in that letter that Mr. Humphrey, who was his superintendent, was present at the conference which followed. He says that he does not recollect positively that Mr. Humphrey recommended consenting to a lease of the dump, but, he says, to refer to his testimony on page 653—

We [Humphrey and himself] agreed upon a line of the proposed lease which would not interfere with our operation and would include only such coal as we had no intention of mining ourselves and did not consider it profitable to mine during the life of the lease, and that both Mr. Humphrey and myself were agreed upon that.

Then comes a letter from Col. Archbald to Judge Archbald, dated November 20, 1911, saying:

Neither of these banks is very good and would hardly warrant separate operation. It would pay the Oxford Coal Co. to take them, which is probably your idea.

As it was said, you see—

The board of directors—as these banks are not first class—may be willing to have them worked under Oxford rates if taken by the Oxford Coal Co.

Next comes the letter of November 22 from the judge to his nephew, saying:

I think probably that I will ask for a separate lease and not tie up with the Oxford people.

Now, as to Madeira, Hill & Co., the other people. It was stated here by the managers—and I do not like to criticize gentlemen of such high standing, and I know of such absolute fairness of intention—but they have stated a great many things in their arguments in this case as to what the evidence discloses that is erroneous. It was stated to the Senate by one of the managers, I have forgotten which, though I think by Mr. Manager STERLING, and if not by him by one of the other managers, perhaps by Mr. Manager WEBB, that Madeira, Hill & Co. made application to the Lehigh Valley Coal Co. for this same Packer No. 3 dump, and offered to pay them a royalty on the coal in that dump of 10 cents and 5 cents, according to the size—chestnut and above or pea—and that instead of accepting that proposition they afterwards agreed to let the Girard estate, if it would, lease that same dump to Judge Archbald and his associates on paying a royalty of 1 or 2 cents.

Now, if that were true, it would be a very strong piece of evidence to show that the Lehigh Valley Coal Co. people were yielding something to Judge Archbald as a member of the Commerce Court, or in some other way. Whether it would tend to show that the judge knew that such influence was being exercised is another question. But it is not true; it is an absolute mistake. The letter to which counsel refers, page 659 in the record, is a letter from Madeira, Hill & Co. to Mr. Warriner, dated March 26, 1910, a year or more before Judge Archbald had any connection with these dumps, and that company applied for dump No. 4, and offered on that dump only 10 cents per ton on domestic sizes—that is, chestnut and over—and 5 cents on pea and buck in excess of the royalties that were to be paid to the Girard estate. The letter making this offer concludes:

If we can close on this, we will take up the consideration of No. 2 bank.

So here was the proposition that was made by Madeira, Hill & Co., who had been for a long time working that Oxford dump and had these dumps Nos. 2, 3, and 4 spread out on the opposite side of the creek, right in front of them. They saw these dumps, and applied for No. 4, and said if they got that they would think of applying for No. 2; but they made no application for No. 3, and why they made no application will appear before I have proceeded much further.

So Mr. Warriner wrote to Mr. Hill on the 3d of May, 1910, answering that letter, "We are inclined to believe that it is best to operate those banks ourselves," on account of certain complications. The complication, it appears, was a question of the difficulties of the Oxford Coal Co., if it washed that coal, shipping the coal over the rails of the Lehigh Valley Railroad Co.

Now, I said I would show the reasons not why they said they would give a dump to Judge Archbald, or consent that it might go to him, and would not consent that it go to Madeira, Hill & Co., but why they were unwilling that No. 2 and No. 4 should be leased and were willing that No. 3 should be taken.

Mr. Manager WEBB. I did not discuss that proposition at all; it was Judge STERLING, I guess.

Mr. WORTHINGTON. I beg your pardon. Of course it was an inadvertent error, no matter who said it.

Now, Mr. Warriner gives at great length, at pages 659 to 661, the reasons why his company did not want to operate No. 3 bank itself. And Col. Archbald, who was not an employee of the coal company or the railroad company but of the Girard estate, gives the same reasons. Mr. Weller, who was the mine inspector of the Girard estate, gives the same testimony about it, and they all say this: In the first place, the coal in this dump was much poorer in quality and much harder to get out than in the other dumps. It was surrounded by a wall of rock. And they say that where the letter B is upon that map [indicating]—and you can see it from where I stand—the Lehigh Valley Coal Co. had dug a hole down into the mine below and had undertaken to use that coal, and after using or trying to use it for a short time found it was not merchantable and gave it up and abandoned it. And they all testified that that No. 3 dump would not stand any royalties except those that had to be paid to the Girard estate in any event.

Now, Mr. Humphrey was a witness, and I particularly ask your attention to his testimony. He was the chief mining engineer of the Lehigh Valley Coal Co. at the time he was examined, but at the time of these transactions he was their division superintendent, he having in the meantime been promoted. He says that before Judge Archbald came to that meeting at which he was present with Mr. Warriner, Mr. Warriner had referred to him the question whether it would be a good thing to lease No. 3, and he said:

I advised leasing it because of the inferior location and quality of the coal and the distance from the breaker and the large rock bank between the breaker and the dump, and the first I knew that Judge Archbald was interested was when he came to the office after I had made my recommendation.

Now, gentlemen, there is a case in which Mr. Warriner, in charge for this coal company of this Packer No. 3 dump, which they had tried to work and concluded they would not work because it would not pay, as the coal was so inferior, and had let it stay there year after year, and the lease was about running out, when they would have to pay additional royalties if they could get it at all, and he says to his trusted superintendent and adviser, "You go and look at that dump and let me know what you think about it and what we should do about it." Mr. Humphrey, who did not even know that Judge Archbald, or any other judge, was concerned or supposed to be concerned in the transaction, goes and examines this property and comes back to his chief and says, "I think it will be a good thing for you to get rid of that dump if you can."

The result was that the whole matter was referred to the Board of City Trusts of the Girard estate, Mr. Warriner saying, in writing—and the letter is in evidence—that he would be willing to let them lease No. 3 dump to anybody upon paying to his company a royalty of one or two cents on all the coal.

In the offer which was made by Madeira, Hill & Co. for the much better dumps, Nos. 2 and 4, they had offered to pay a greater royalty, but on the larger sizes only. This was an offer to pay a royalty on all sizes; and I am advised that if you look at the two transactions and estimate the royalty at 10 and 5 cents on the larger sizes only and take the royalty of 1 and 2 cents on all the sizes, as those sizes are shown to have existed in that dump, it will reach as much, if not more, under the last proposition than under the first.

That is the transaction in relation to Packer No. 3 dump, and you can judge from that whether it appears that Judge Archbald made up his mind that he would go to the Lehigh Valley Railroad Co. or the Lehigh Valley Coal Co., which the railroad company controlled, and try to drive a good bargain, or that the company on account of that influence undertook to give him a good bargain.

Now, I take up next the second of these two culm-pile transactions, that relating to the Katydid dump. I venture again to suggest that there is not a Senator who is listening to what I say who has not a pretty firm conviction that the Hillside Coal & Iron Co., a subsidiary of the Erie Railroad Co., had agreed to sell to Judge Archbald a dump which was worth a large amount of money for a very small consideration. But I

say it will appear that that idea, too, from whatever source it may have come, is absolutely without the slightest foundation.

In the first place, this dump was not sold at all. The only piece of evidence is a letter from Capt. May to Mr. Williams, dated the 30th of August, which I wish to read to the Senate. Every manager who has spoken in this case, I believe, unless it be Mr. Manager HOWLAND—and he did not refer at all to the facts in the case, but dealt with the law—has told you, unless I am much mistaken, that after the visit which Judge Archbald made to Mr. Brownell, the Hillside Coal & Iron Co. agreed to sell to Judge Archbald the Katydid dump. It never did. This whole case, so far as article No. 1 is concerned, rests upon this letter dated August 30, 1911, addressed to Williams and signed by May:

(Pennsylvania Coal Co., Hillside Coal & Iron Co., New York; Susquehanna & Western Coal Co., Northwestern Mining & Exchange Co., and Blossburg Coal Co.)

OFFICE OF THE GENERAL MANAGER,
Scranton, Pa., August 30, 1911.

Mr. E. J. WILLIAMS,
626 South Blakely Street, Dunmore, Pa.

DEAR SIR: As stated to you to-day verbally, I shall recommend the sale of whatever interest the Hillside Coal & Iron Co. has in what is known as the Katydid culm dump, made by Messrs. Robertson & Law in the operation of the Katydid breaker, for $4,500.

In order that it may not be lost sight of, I will mention that any coal above the size of pea coal will be subject to a royalty to the owners of lot 46, upon the surface of which the bank is located.

It is also understood that the bank will not be conveyed to anyone else without the consent of the Hillside Coal & Iron Co., and that if the offer is accepted articles of agreement will be drawn to cover the transaction.

Yours, very truly,
W. A. MAY,
General Manager.

So that all that Capt. May did was to say that he, to his superiors, would recommend the sale of his company's interest in this dump. Now, what is the Katydid dump?

I may say before I proceed with this that the statement which the managers made to the House and the statement which they made here, and which they started out to prove here by Mr. Rittenhouse, was that the Katydid bank was of the value of $47,000, or, under a certain probable contingency, between three and four thousand dollars more. In other words, that for $4,500 to the Hillside Coal & Iron Co. and $3,500 to Robertson, or $8,000 in all, Judge Archbald acquired the ownership of a piece of property which was worth $52,000. That is what they stated to the House when they asked the House to impeach Judge Archbald. That is what Mr. Manager CLAYTON read to you in his opening statement, quoting what had been said to the House of Representatives. They put Mr. Rittenhouse on the stand to prove it. But we had not proceeded very far in this case when Mr. Manager STERLING, on behalf of his brother managers, rose in his seat here and moved to strike out the evidence of Mr. Rittenhouse and all the evidence in the case as to the value of this property, stating it was a wholly immaterial matter whether it was of any value or not.

We shall see why that extraordinary change of front occurred. Mr. Robertson was on the stand when that motion was made. He was one of the first witnesses examined by us. Mr. Robertson was the man who made that dump. You have heard the explosions, if I may use that word without affront to the managers here, in reference to the proposition that no railroad company controlling land ever let go its property to other people; that they hold on to it like grim death; that if anybody gets one of their coal claims from them it must mean that some improper influence has been used.

Senators, in the year 1885 this very Katydid property was leased by the Hillside Coal & Iron Co. to Mr. Robertson. The property with which you are dealing in this first article is a piece of property which the Hillside Coal & Iron Co. let go of 25 or more years ago.

Again, as my associate reminds me, in 1901, in a letter which is in evidence, the Hillside Coal & Iron Co. confirmed that arrangement and fixed the royalties which Mr. Robertson was to pay the company for mining its coal. Only four or five hundred feet away to-day and for years past the Hillside Coal & Iron Co. has that great operation which was referred to here as the Consolidated mine. They have their machinery there working that great operation.

They leased this part of that property to Mr. Robertson, who was not a member of the Commerce Court, or of any other court, but a plain, industrious man, who was trying to make a living in the coal business; and he operated that Katydid mine, and in the operation thereof made the Katydid dump; and under the decisions of the Supreme Court of Pennsylvania, which nobody disputes, that Katydid dump belonged to the man who made it.

They talk here about the Hillside Coal & Iron Co. selling that dump to Judge Archbald. They could not sell it to anybody. They had their royalty rights in it and they had nothing more.

Mr. Robertson tells you that they began their operations on that mine in 1885 or 1886 and continued working it until 1908, Mr. Law coming in with him, under the firm name of Robertson & Law, for a few years in the middle of the term. Law went out again and Robertson continued the work alone until 1908. In 1908, on account of some operations of another coal company, the Delaware & Hudson, in the immediate vicinity, something happened which cut off Robertson's supply of water and he could not go on with his washery operations, which he had begun in 1905 and had continued for three years. He could not go on more than two hours a day, because he could not get the water. He therefore stopped his washery. A few months afterwards, in the latter part of 1908, the breaker and the washery all burned down.

Mr. Robertson, as well as Judge Knapp, an eminent lawyer in Scranton, who testified concerning this matter and was counsel for the Hillside Coal & Iron Co., tells us that Robertson did not resume the mining operation because he had nearly worked out the piece of property which he had leased from the Hillside Coal & Iron Co. Thus Robertson was left with the Katydid dump on his hands.

Now, what happened? Mr. Robertson was the man who had been from 1905 to 1908 using the washery on that dump, reclaiming the small sizes of coal, which have become valuable in these later years. He started to work the oldest part, which, as he says, and as everybody says, is the best part of all the dumps, when the fire occurred and burned down his washery, as well as his breaker. Why did he not rebuild it? Because, he says, it would not pay to build a washery there. There was not enough coal left to justify it. His foreman, Mr. Monie, who was there running this operation for him all these years, we brought here and put upon the witness stand, and he confirmed Mr. Robertson in every one of the particulars I have stated in regard to what happened in reference to the Katydid dump. He says that they ran out of water and that besides, after the fire, the dump could not be operated to advantage.

What happened then? Robertson, having that Katydid dump on his hands, and knowing that there was no money in it, because he knew almost every piece of coal that was in it, he made it, having the advice of his foreman, who had made it for him and under his eyes, knowing that it would not pay to build a washery there, that he would never get back the money spent on it if he did, then went to work trying to find somebody to whom he could sell it. In the early part of 1909 he found the Du Pont Powder Co. wanted to buy a coal dump, because they were proposing to establish a plant there in their business. He immediately got into communication with the Du Pont Powder Co. He first went to Capt. May and said to Capt. May, "Now, this dump we want to sell; I think I have a purchaser to take it off our hands, and I propose to sell it for $10,000. I will take $8,000 of the $10,0000 and you may take $2,000." Capt. May said to him, "Go ahead; I will recommend that."

That was in the early part of 1909. So Robertson testifies, so May testifies, so do Mr. Belin and Mr. Saum, Belin being the representative of the Du Pont Powder Co. and Saum their expert, who had investigated the bank at that time for Belin.

So you see that in the early part of 1909 Capt. May was willing to dispose of the interest of his company in this dump and to recommend exactly what he has done here, and all he has done here, saying "I will recommend the sale of the interest of my company in that dump for $2,000."

So Mr. Robertson, having the authority of Capt. May to sell the dump for $10,000—$8,000 for himself and $2,000 only to the Hillside Coal & Iron Co.—went to Mr. Belin and said to him, "You can buy that dump for $8,000." Belin said, "Will I get the Hillside Co.'s interest as well as yours?" "Yes, sir." Then he went to Mr. Saum and asked him to investigate the dump and let him know whether it was worth $10,000. Mr. Saum did make the examination, and Mr. Belin said because of that report and because at the same time his company found it could make a good arrangement in another way to get their power without manufacturing it themselves, they gave up the idea of buying.

That left Mr. Robertson in the early part of 1909 with this great $50,000 piece of property on his hands, and he could not get rid of it for anything to anybody. He went time and again, as he testified and as May testified, to Capt. May trying to sell his interest to May's company. May would not buy it. He would not make any offer for it at all.

It seems to me, Senators, that I ought not to have to go a step further to show there is nothing in this proposition about the Katydid dump and the sale of a valuable piece of property to Judge Archbald for the benefit of his prospective influence as a judge in the Commerce Court, but I propose to go on and show the other testimony to show that there can not be any

possible question about that, to show why the honorable managers, when this question was entered upon by us, after this impeachment had been obtained by the statement that that property had been sold to Judge Archbald for $8,000 which was worth $52,000, and how the honorable managers wished to get the whole matter out of the case.

Mr. Law says that during the time he was with Robertson he observed that they were building a pile of ashes there. Robertson and his foreman Monie have both testified to that. I have not referred to it as I went along, but on that map of the Katydid you see on the wall, down on the southwest corner, there is a very considerable proportion of it. That is marked and named there conical dump. Mr. Robertson, Mr. Monie, and Mr. Law all say that that was where they dumped their ashes from their works for 15 or 16 years or longer, and after they had dumped the ashes there, or while they were dumping the ashes there, they removed a large amount of rock, not coal mixed with rock, but rock, where they had for some reason in their mining operation to take out a quantity of rock. They piled that on the ashes, and on top of the ashes and the rock there had been some coal, and when Mr. Robertson had been working his washery between 1905 and 1908 he washed the coal that was there, so far as he could get at it, and left nothing but the very fine refuse that was not worth anything. That is the conical dump which contains some 15,000 or 16,000 tons, according to the testimony of all those who measured it. Mr. Monie and Mr. Robertson and Mr. Law all concur about that.

There is another thing. You see upon that map one place that has the legend upon it, Slush bank. The testimony shows that that was the place where they had made a pile of absolute rock. Nobody claims that that was any part of the coal dump, but the testimony shows that that bank which is all rock, with some slush put on top of rock, and that is the reason they call it slush bank, was made at the same time the coal dump was made.

Everybody knows if you empty from vehicles material of rock, coal, or dirt, or sand, forming a dump, it will spread at a certain slope in all directions as you go along. Mr. Rittenhouse, in making his estimate, supposed that coal dump to have that slope there, and did not know what these witnesses testified to, that the coal dump was built side by side with the rock dump at the same time, so that a line between them would be practically a vertical one.

Mr. Frank A. Johnson, who was the general coal inspector of the Hillside Co. and has worked around the Consolidated breaker, which was near this dump, said he was on that Katydid dump ground daily for 17 or 18 years, and on the conical dump he saw them working a great part of it the second time.

Mr. Petersen, who managed that consolidated operation for the Hillside Co. and was in the employ of that company for over 25 years and has been engaged in mining in all its departments, including washeries, says he knew the Katydid dump quite well, and when asked what it was worth said, "I would give five or six thousand dollars for it." He saw Robertson working when he was operating his washery there between 1905 and 1908, and said that he had worked the best part of the dump.

Mr. Saum, the expert to whom I have referred, who was employed by Mr. Berlin, of the Du Pont Powder Co., after the dump had been offered to him for $10,000, first went and made cursory examination of it in February or March, 1909. A little later than that he went there again. He first figured out that the value of what was there was about $33,000. According to the testimony of the experts it would cost nearly that or more than that to build the washery itself. Mr. Saum himself, who was employed in this matter, you will remember, by Mr. Berlin, of the Du Pont Powder Co., and for it only, no railroad ghost pervading the atmosphere in any degree at that time, told Mr. Berlin it would cost $35,000 to put in a proper and complete washery to handle that property, which he said was worth only $36,000, and that the cost of operation in addition to that would be about $15,000. If you add the $35,000 for the cost of the plant and the fifteen thousand and odd dollars for the cost of operation and the $8,000 which Judge Archbald and Mr. Williams were to pay for the dump, you will find that whoever took and operated it on that basis would lose the sum of twenty-two thousand and odd dollars.

He says in that calculation he included that conical dump as all coal. He did not know it was a pile of rock and ashes and that there was nothing there that was worth anything.

The next man who testified about that dump was this same Thomas H. Jones, to whom I referred in connection with Packer No. 3 dump. On the 6th of April, 1912, he got a written option from Judge Archbald, offering to sell him that dump for $25,000; and he was trying to find a purchaser for it. He went there with three other men to examine that dump and he said the estimate was that there were about 22,000 tons of coal there, which would be worth, at the rate fixed by all these experts, less than the $8,000, which was to be paid by Judge Archbald for the dump if he got it. He said, "I then went and I told Williams, if you get me an option on it I will get a competent engineer to make an estimate." He says Williams said that there was a great deal more coal in it than Mr. Jones thought there was, and it was then they went to Judge Archbald and got the option.

Then Mr. Reese Alonzo Davis went there with Jones. He said that he—Davis—had a purchaser named Beardslee. He went there with Beardslee and Jones to make a sale. He was trying to get a commission by selling to somebody. Beardslee went with him and looked at it, and he—Davis—said he thought there were 20,000 tons of fair coal there. Beardslee said he would not take it as a gift. Then Jones got a man named Motiska, a mining engineer, to go there, and Motiska made an estimate of 68,000 gross tons, and told Jones how much coal he could get out of it. Then Jones concluded there was no money in it; he dropped it.

Beardslee, who was the next witness on the stand, said he was in the business of washing coal dumps. He wanted to get such a dump. He was told this Katydid dump could be got at a reasonable price, and he went with Jones and Davis to look at it. He said it was too small to warrant an operation at all; that it would not pay for building a washery.

In addition to that, he could not see that he could get any water, and when he was asked what it would cost to furnish the water to run it he said he did not see where he could get it at all. He was in exactly the same plight as Robertson was when he stopped work. There was no water there to wash the dump, and probably it would cost as much to get water there for that purpose, without regard to what the machinery would cost, as the coal in the dump was worth.

Another gentleman who examined that dump was Mr. Thomas Ellsworth Davis. He has been a mining engineer for nearly 30 years. He is the official appraiser at the present time of coal properties for taxation for the counties of Lackawanna and Luzerne, and he is the consulting engineer on that subject of the State tax board. He tells you he examined that dump about the same time these other parties did, and the value in his opinion was about $2,500 to $3,000. He went there to examine it for some people who wanted to buy it, and he said he reported to them not to touch it.

Frank A. Johnson was still another witness on this point. He was inspector of the Hillside Coal & Iron Co.. I am coming down to what is most important in regard to this question. When Judge Archbald wrote his letter of March 31, 1911, to Capt. May asking him whether his company would sell the Katydid culm dump and at what price, Capt. May immediately directed an examination to be made of that dump. That letter is here in evidence, and upon the letter were the notations he made as to the directions he gave.

Mr. Johnson went there at the direction of Capt. May with a man named Merriman. Merriman was the man who was to find out how much material there was in the dump. That was his business. Johnson was the man to see what kind of coal there was, how much coal, and what sizes. So the combined information they would give Capt. May would let him know what that dump was worth to the Hillside Coal & Iron Co.—what amount in royalties the company might expect to get out of it.

Johnson went there with Merriman. He says when he went there he did not know whether that bank was to be bought or whether it was to be sold. His chief, Capt. May, said, "Go there and examine that dump with Merriman and find out what there is in it and find out what it is worth, and make your report to me." So he and Merriman went there to inform their superior officer what that dump was worth, not having the slightest idea what was to be done, whether he wanted to buy or whether he wanted to sell.

He described that conical dump and tells about the rock there. He knew about that. Merriman left it out; he knew all about it. Then they made their report to Capt. May that there were about 55,000 tons of gross material in the dump, and Mr. Merriman made a blue print, in which he gave the representation of that dump the same as the map there, except on a smaller scale, and except also that he left out the conical dump. He figured on it and stated at the bottom what the 55,000 tons gross meant, using the same language there from which the managers have contended that that meant 55,000 tons of coal. I shall address myself, as I go along, to that proposition and show there is nothing in it.

Mr. Johnson was one of the men who made that report, and he says he told the captain there were 55,000 tons altogether, and that that is what Mr. Merriman reported. Mr. Merriman is dead and we can not have the benefit of his testimony.

The next witness on the subject is Mr. Jennings, general inspector of the Hillside Coal & Iron Co., who built the Consolidated and was in charge of it from March, 1909, until the present time. He went to the Katydid with May in the latter part of May, 1911. Here is another employee of Capt. May's, his general inspector. These two people, of whom I have already spoken, Merriman and Johnson, went there in April immediately after the receipt of Judge Archbald's letter of March 31. Jennings went there with Capt. May in the latter part of May, 1911.

He had an idea that some day Robertson would rebuild and undertake to wash that dump. We know it is not so, because Robertson had washed it for awhile and knew what was in it, and knew that it would not pay to build a washery, and, as he told you on the witness stand, that is the reason he did not resume work.

Jennings says:

I told him that when Robertson & Law started again to wash that dump all we would get would be the royalty we would pay—

"We." The record should read "they"—

and it was just a question with us of waiting to get our money by actual shipment or taking the money—that is, we had a very unstable agreement upon which we operated this mining, at least a part of it, on lot 46; and if we sold it, it would be off our hands and we would have the money.

And at that time—

Says Mr. Jennings—

I knew nothing as to Judge Archbald having any communication with Capt. May about this matter.

Now, here again, as in the case of Packer No. 3, you find the man who was in charge of this dump taking his most trusted and reliable advisers, asking them to give him information as to the value of the interest of his company in the property, and not letting them know who it was for whom he was getting information or what his object was in getting it, and they all three of them concur practically that the property is not worth anything and he had better get out of it what he could.

Therefore, when this report was submitted to Capt. May, there was simply presented to him the proposition, "We have the right to royalty on the coal that is in that dump that will come out of it if anybody can be induced to go to the expense of building a washery; and if nobody does build a washery, we will get nothing out of it.

On that map of Mr. Merriman's which is in evidence are figures made by Capt. May showing how he got the value of that royalty. He figured it that the value of his company's interest was $6,000. Capt. May testified, and Mr. Williams has testified, that when Williams went to May on the last days of August to get this letter from May, Capt. May then demanded $6,000, and Williams beat him down to $4,500; and on those same figures Capt. May has added the $3,500 which was to be paid to Robertson.

Now, bear in mind this further fact, Senators. When, in February or March, 1909, Robertson and May together had offered that property to the powder company for $10,000, Robertson to have $8,000, May being willing to take $2,000, Robertson, who made that dump and knew what was in it, in 1911 had come down from $8,000, which was his former price, to $3,500, which he asked Judge Archbald for it; and Capt. May, who was terribly influenced by the overwhelming power of a judge of the Commerce Court, and who had offered to sell in the spring of 1909 the interest of his company, their royalties, for $2,000, demanded $4,500 from the judge of the Commerce Court, and put that in his letter. If that is the effect of judicial influence in obtaining favors, I pray I may never have the benefit of it.

Capt. May says the engineers reported 55,000 tons of material—not 55,000 tons of coal—in the dump. It is a curious thing that all through the taking of the testimony in this regard the learned managers, and especially Mr. Manager STERLING, who seemed to have charge of the examination of witnesses about this particular dump, insisted that that 55,000 tons meant 55,000 tons of coal. I have shown by the testimony of all these witnesses that it was 55,000 tons gross, not more than half of which would be coal. If that be so, on the testimony of every witness in this case it would not pay to build a washery to reclaim it.

But later in the taking of the testimony in this case the report of Mr. Rittenhouse, upon which they have relied from beginning to end as to the value of this dump, was formally put in evidence by consent, and in that report, as the managers will find on page 1050, Mr. Rittenhouse himself says that these engineers reported to Capt. May that the dump contained 55,000 tons gross and not 55,000 tons of coal.

I want to go on to the history of this transaction. They found a purchaser. How they found a purchaser we will consider a little later, but Mr. Conn, who was the representative of the line running from Wilkes-Barre to Scranton, called the Laurel line, became a prospective purchaser of this dump. There is a contract in evidence here by which, if the title had proved satisfactory, he would have taken it, and he agreed to pay 27½ cents a ton for the coal in it.

I take the report of Mr. Rittenhouse, which included that conical dump and included the coal which he supposed to be in the slope to which I referred a few minutes ago, making 25,000 tons more of coal than was actually in the dump. At his figure, taking the whole quantity of coal thus found to be in that dump at 27½ cents a ton, which Conn was to pay, the total amount would have been $14,000; there would have been a profit of $6,000, and that is the most that can be figured out of this transaction that Judge Archbald and Mr. Williams could have received in any possible event.

Conn would not pay any lump sum; he was on his guard. All that the venders would have received under that contract would have been $10,000, or a profit of $1,000 each to Mr. Williams and Judge Archbald.

Now I come to another step in this case, and one upon which the managers have relied here as they relied on it when they made their report to the House, copied it and read it in the opening statement which is made here to you, and they have repeated it time and again in your hearing, and I have no doubt it has influenced the mind of every Member of this body who has been here and heard what was said about it. Why, the managers exclaim they sold this dump to Mr. Bradley for $20,000, making a profit of $12,000, of which sum $6,000 was to go into the pocket of Judge Archbald.

Now, let us see. Mr. Bradley is a plain man. I wish you all had seen him. I do not know how many of those who are listening to me saw him on the stand. I venture to say that nobody who did see him would question his absolute truthfulness. He said he went down to see that dump at the instance of Mr. Williams, and concluded it was worth $16,000 after hearing what Williams had to say about it. Then he went back to the office of William P. Boland, and there Williams and William P. Boland made him think it was worth more and he agreed to pay $20,000 for it.

How was that done? Why, said Williams and Boland to Bradley, "Jones is going to buy that dump for $25,000"—this same Jones who had a 10-day option for $25,000—the same Jones who went down there with his friend as a purchaser to see what it was worth, and the friend who proposed to be a purchaser would not take the dump as a gift. "But," said Boland and Williams to Bradley, and Bradley himself tells us this, "Why, you can sell this dump to Jones for $25,000. He has got a man who will pay $25,000 for it, and if you will get it for $20,000 you will make $5,000." Mr. Dainty was there at the same time, and Mr. Bradley, the honest fellow, tells you, "I was to get that, and I was going to give Dainty $2,000 and keep the other $3,000 myself. That was the profit I was to have out of it." Mr. Bradley tells you that William P. Boland was the first man who spoke to him about that dump or about his buying it, and that "he urged me to buy and he told me it was worth more than $16,000. He hurried me along. I went down to the dump one day, and the next day we went over to Capt. May to see if it was all right."

Now, mark this: These men had made that poor fellow Bradley understand, as he says, that there were from eighty to a hundred thousand tons of coal in that dump; so he says; and he proceeded upon that basis when he made that proposition—that there were eighty or a hundred thousand tons of coal there—when, according to the exaggerated estimate even of Mr. Rittenhouse, the man who put the greatest value on the dump, there were between eighty-five and ninety thousand tons of stuff there altogether.

Was there a sale to Bradley? Not at all. Says Mr. Bradley: "I did not intend to complete the transaction until I went to see my lawyer, and I never got far enough." He never did see the lawyer. Of course, if he had, the result would have been the same as it was when they were trying to sell to Mr. Conn.

Inasmuch as that Rittenhouse report is the only thing relied upon in the House or here to show that that property was worth forty-five or fifty thousand dollars, I must devote a little more attention to it than I have already done. I think I have shown by testimony that is overwhelming that Rittenhouse's testimony could not be considered at all—that this dump was practically worth nothing. The testimony of the man who made it and his foreman alone would be sufficient for that; but let us look at Rittenhouse's report.

The very first item that he has in the report is an item of chestnut coal, which he appraises at $3.25 a ton, and makes

of that the enormous total of $17,800.25. Now, by the testimony of a dozen witnesses, it is shown that there was no chestnut coal in that dump that was worth anything and that in none of these dumps is the chestnut worth anything; so that that $17,800.25 will have to be struck from the report. When these dumps were being made the chestnut coal was of a marketable size; nobody took and threw into a dump lumps of coal the size of chestnut and above which were all coal and were always valuable. It was only when it was mixed with bone or rock or some substance which made it impossible to handle it in the original size that it was thrown into the dump.

Mr. Robertson was working that very dump for three years, and working the oldest part of it, which everybody concedes was the best part of it. The managers themselves did concede that over and over again. Robertson could not market a particle of chestnut out of the best part of that dump for the reason that it cost more to separate it than it would amount to. He said all the coal in that dump was very small—"No. 3 buck" and smaller; he could not get anything larger than "buck No. 1." John Monie, Robertson's foreman, says, "We tried chestnut, and we failed utterly; we just stopped trying to make it, and we run the stuff back into the bank." Frank A. Johnson, the coal inspector of the Hillside Co., said it was impossible to run the larger sizes. Robertson failed to do it, and his report was that that bank contained five-tenths or one-half of 1 per cent of chestnut and three-tenths of 1 per cent of pea.

Capt. May, who, of course, knew all about that dump and its contents, says there is no marketable chestnut in the Katydid; and Mr. Jennings, the general inspector of the Hillside, says you can not do anything with the chestnut; the proportion of coal is so small you can not clean it on account of the amount of machinery required to do it. Mr. Saums, who was Mr. Belin's expert, says he had never found it practicable to work dump coal and clean it and get chestnut out of it. He included coal larger than pea, he says in his report to Belin, because he was estimating the coal, slate, and culm all mixed together. He says Belin asked him to put a value on it, and therefore he had to classify it. Mr. Reese Davis, who went to look at the Katydid, could see no pea or chestnut. Mr. Ellsworth Davies said there was about one-half or 2 per cent of chestnut there. Petersen, who ran the consolidated dump and its washery, also said when they started the Katydid they tried to win chestnut to make it pay, but because there was so much impurity and waste to be handled in proportion to the small amount of coal it was not commercially feasible.

The most remarkable thing of all is that Mr. Rittenhouse himself, who in his report puts the chestnut coal in the dump at $17,500 or thereabouts, says it would hardly be worth while to put the screens all on for the small quantity of larger sizes.

I think that I have demonstrated by the mouths of numerous witnesses and out of the written report of Mr. Rittenhouse himself, upon which alone the managers have relied to fix a great value on this Katydid dump, that the item of seventeen thousand and odd dollars which he puts in as the value of the chestnut coal in that dump must be stricken from it entirely; and it is not worth while to deal with or to consider at all the rest of his figures.

Now, I have come to a different matter from the consideration of the value of the Katydid dump, and I must ask the pardon of the Senate for having devoted so much time to it, because it seemed to me, in view of the numerous statements which have been made outside and which must have reached the ears of Senators, and the statements on this subject which have been made to the House, which come before you in the CONGRESSIONAL RECORD, and those which have been made here in the opening statement of Mr. Manager CLAYTON, that there must be lodged in your minds the idea that this Katydid dump, instead of being a worthless pile of refuse was a piece of property of great value. But I come now to consider other matters.

I want, in the first place, to take up the visit that Judge Archbald made to Mr. Brownell, the general counsel of the Erie Railroad Co. One of the managers—and I am sure that it was Mr. Manager WEBB—in reference to a letter which Judge Archbald wrote to Mr. Brownell in the latter part of July, 1911, asking for an appointment, undertook to convey the idea that there was something about that letter of a mysterious and secret character. As an evidence of that, he said it was not written on Commerce Court paper. It would be a curious thing for Judge Archbald, in writing to Mr. Brownell, the general counsel of the company, who he is said to have wished to influence by his judicial position, should omit to use Commerce Court paper, when he used it in writing to everybody else; but, as a matter of fact, the learned manager is mistaken.

The letter, as anybody may see by examining it here in the hands of the Secretary, is on Commerce Court paper, and as the letter is printed in the record, at page 216, the printed heading of the Commerce Court is there.

It has been assumed here by the managers that prior to the time Judge Archbald went to see Mr. Brownell Capt. May had refused to sell this property. There is no testimony to justify that statement. Capt. May never did refuse. As we have seen, he started this investigation on March 31 and was continuing it down into the month of May. Then Mr. William P. Boland, who had suggested to Mr. Williams, in the first instance, to go to Judge Archbald and get a letter to Capt. May, said to Mr. Williams—and this William P. Boland testifies to himself—"I said to Williams, Go to Judge Archbald and get him to go to the New York office of the Erie Co." I do not mention that as any defense of Judge Archbald if he did anything that he should not do in going to see Mr. Brownell but as showing again that he never conceived the idea himself of going to the headquarters of the Erie Railroad Co. for the purpose of influencing its officials. And what story did Williams tell when he came to Judge Archbald to get him to do that? "Why," he said, "Judge Archbald, there was some trouble about the title of this Katydid dump, and Judge Willard"—then a member of the firm of Willard, Warren & Knapp, in Scranton—"had examined that title and made a report on it, and there has never been any final determination of the matter." Then he suggested to Judge Archbald that he might go to the headquarters of the company and find out what was the result of that inquiry as to the title of the company. So Judge Archbald went to see Mr. Brownell, to learn what had become of the investigation that was being made or had been started in reference to the title of the Katydid dump.

There is no word of testimony in this case that justifies the statement that has been made over and over again that when Judge Archbald did act upon that suggestion and went to see Mr. Brownell he knew that anything had taken place between Mr. Richardson and Capt. May in the month of June preceding in reference to advice by Richardson to May to let the matter drop for the present. Mr. Brownell says that when the judge came there, what he said to him and all he said to him was that he understood the matter of clearing up the title had been referred to him, Brownell. That fits in exactly with the testimony as to what Williams said to Judge Archbald and as to Judge Archbald's reason for going to see Mr. Brownell. He said he understood the matter of clearing up the title had been referred to him, Brownell, and he wondered if that was what was holding up the matter of the disposal of the interest of the Hillside in that dump. And Richardson says that when Brownell brought the judge in to see him the latter told him that he wanted to know the result. He says he did not promise the judge anything. He simply said he would see the general manager, just as he told everybody else making such communications; that there was no change in Mr. May's mind about the matter, so far as he, Richardson, knew; that Richardson simply said to May to take it up again and see what could be done with it.

The principal reason why May favored it was this—and now I call your attention to this small matter, which might make very little impression upon you and in which you might think perhaps there was no point—"Why," says Capt. May," I wanted to sell that property so as to see my friend Robertson get his money out of it."

Capt. May from the beginning to the end was always in favor of selling the property; nobody suggests that he ever changed his mind about it. When Mr. Robertson was upon the stand he testified that he would not allow this property to be sold to anybody who was not satisfactory to the Hillside Coal & Iron Co. If anybody wanted to get his interest in that dump, he had first to make his peace with the Hillside Coal & Iron Co., because he was not going to make any trouble for his friend, Capt. May. Capt. May told you that, when the question of selling it came up and he saw that Robertson could make $3,500 out of it, he was very anxious to have it sold so that Robertson could get his money. Can you not see the picture of these two lifelong friends, one of them working the dump and paying the royalties and the other receiving the royalties and distributing them, meeting each other on the streets of Scranton day after day for 20 long years, working about this business, each thinking of and respecting the other, and neither of them wanting to make trouble for the other? Robertson would not sell to anybody that May was not satisfied with, and May was very anxious that the property should be sold so that his friend Robertson would get the money he never would get unless somebody else took charge of that dump, because Robertson himself knew that there was not enough money in it to justify the erection of a washery.

Now, another thing about this. It does not appear that Capt. May or Mr. Brownell or Mr. Richardson ever knew that Judge Archbald was financially interested in the purchase of this property. Every one of them says that Judge Archbald never told him in what regard he was acting, whether for himself or as representing somebody else who wanted to buy it. Each one of them explicitly makes that statement, and they all say that they would—Capt. May says explicitly he would—have sold at the same price to anybody. Robertson says the same thing. They have both testified on this stand that anybody can go there and have that dump now for $4,500 so far as Capt. May is concerned, and for $3,500 so far as Robertson is concerned.

As to the price of this dump, Capt. May never had a word or communication, verbally or otherwise, with Mr. Richardson about the price that was to be charged for their royalty interest in that piece of waste stuff they called the Katydid coal dump. Mr. May got the reports from his subordinates, and he determined that he would recommend the sale for $4,500. He was an officer of the Hillside Coal & Iron Co. He was not connected with the Erie Co. in any way directly, although his company, of course, was owned by the Erie Co. He did not know that the Erie Railroad Co. had any litigation in the Commerce Court, and he never heard about the Lighterage case nor the fuel case, nor any of this other litigation, till this investigation began.

Thus you have, in the first place, a piece of property that was not worth anything; that would not be worked; out of which no royalties could be got, and Capt. May, finding out what the royalties would be worth if somebody would work it, offered to sell the interest of his company, as much as anything else, so that his friend Robertson could get his money out of it, he himself fixing the price of those royalties without knowing that there was any litigation in the Commerce Court in which the Erie Co. was concerned.

Mr. Richardson says that he never changed his attitude about the matter. He uses that expression: "I did not change my attitude. I did not know whether Judge Archbald was interested for himself or others. I did not know he was financially interested. I knew nothing of the Erie lighterage case."

Mr. Richardson, when he spoke to Capt. May in June and told him to take up the matter again and report on it, did not know anything about the Lighterage case that was pending in the Commerce Court. He says: "I might or might not have approved May's recommendation. No sale would stand without my approval. I simply told him to go on with the investigation and report to me. I have received no report. I did not tell May what my recommendation would be. I did not see how he could give the option, the interest was so small; and when he told me in June of overtures that were being made by somebody for the purchase of that dump he did not call my attention to the fact that Judge Archbald was the person who was interested."

It seems to me that we are pretty near to the end of the proposition that Judge Archbald went to the office of the Erie Railroad Co., and they directed this property to be sold to him, because he was a judge of the Commerce Court.

I want, now, to consider for a few moments this remarkable man and witness, Mr. Edward J. Williams. He was put upon the stand by the managers and examined by them and cross-examined by us. A few days ago one of the managers, Mr. Manager WEBB, I think it was—you will find this recorded on page 972—said, "We disclaim Williams as our witness." I had made some remark to the effect that Mr. Williams was their witness, and he said, "We disclaim him." Well, he certainly was not our witness; we never offered him here as a person upon whose testimony we asked you to rely in any degree whatever. The managers disclaim him, and I do not see how anything can be done with his testimony except to throw it out of court. But I will suppose that you may take a different view about it, and I will consider him for a moment.

There is one thing that can be said about Williams, and that is that he was an impartial witness. As to everything, I think, which was material in his testimony he testified distinctly and clearly on both sides. He said, on page 136, that the judge told him he would see Brownell about it, and on the next page he says that the judge did not tell him he would see Brownell about it. On page 139 he said he got an option one or two weeks after seeing him. Now, as illustrating the value of Mr. Williams's testimony—and I do not wish to be severe upon the old man; I have my own ideas about him—he took that letter of Judge Archbald's to Capt. May on the 31st of March, 1911; he went back to May and got the letter which I read, in which May says he will recommend the sale of his company's interest, on the 30th of August following—April, May, June, July, August—five months had intervened, and yet when Mr. Williams is asked how long it was from the time he went with the first letter until he got the option, he says, "It was one or two weeks." That is to be found on page 139 of the record in this case. Then he says that Judge Archbald never said that he would hurt Capt. May, or anything like that. On page 138, when the words were forcibly put in his month on the ground that the managers had a right to cross-examine him, he says he did say it. That is on page 166.

There is another matter which illustrates the value of his testimony, and it is more striking than anything that I have mentioned. I refer to the $500 note that Judge Archbald indorsed for John Henry Jones in December, 1909. It was a three months' note, I believe, although that does not make any difference, and has been renewed continuously from that time down every three or four months. It has been renewed over and over again, and every time Jones signed it, Judge Archbald indorsed it, and Williams indorsed it; the last time Williams indorsed it, being only a day or two before he came down here to testify before the Judiciary Committee. He was asked about that, not by us, but by the managers, whose witness he then was, and he said he indorsed the first $500 note, but he never indorsed one afterwards, whereas he indorsed every one of them, as everybody admits and the bank records show, from the beginning down to the end.

Now, I will ask you to remember another thing about that man. I will speak a little later of how Mr. Boland got him to agree with him to try to get Judge Archbald to do things that Mr. Boland thought might make trouble, but I want to speak of Williams now as a witness. In the first place, he lived in William P. Boland's office. He told us that for a good many long years past, every day, except on Sunday, when the office probably was not open, he spent practically the whole of his time in William P. Boland's office; and after Mr. William P. Boland started the trouble, which has resulted in this trial and in the course of proceedings, Mr. Wrisley Brown, the gentleman who has been doing us the honor to be present during these ceremonies, sitting with the managers and assisting them in the presentation of this case, took the statement in Scranton of Mr. Edward J. Williams, Mr. William P. Boland sat at his side, and from time to time made suggestions or asked questions. Williams says he asked all the questions, but the record shows that he asked very few. Then, Mr. Boland, after he had been down before the Interstate Commerce Commission and an arrangement had been made by a member of the Interstate Commerce Commission for a hearing in this matter before the Attorney General, Mr. Boland sends a telegram to his wife or to some other member of his family a little short of midnight on a certain day, and they rush over to Williams's house, put him in a carriage, take him to the station, rush him down to Washington, and take him to the Attorney General's office, where William P. Boland and Mr. Cockrell, who was there representing the Interstate Commerce Commission, one on one side and one on the other, put words into his mouth and lead him to talk there. Finally he is summoned down before the Judiciary Committee of the House. He appears there as the first witness in the case and sits at the witness table, and William P. Boland has the audacity to separate himself from the audience at that hearing and walk up and sit down at that table beside this old man Williams, so that their elbows touched, and stayed there until Mr. HIGGINS, a member of the Judiciary Committee, perceived what an indecent thing was being done, and suggested that that table was for witnesses and for nobody else.

So it was that this old man, whose understanding of the English language and manner of expressing himself are not of the best, on these three several occasions had been influenced by William P. Boland to make statements, and when he came upon the stand here if in giving his recollection he did not satisfy the honorable managers as to anything he knew or said, there was immediately crammed into his mouth something that had been said by him on one of these former occasions. That is why as to so many of these matters he contradicted himself.

Another thing, Mr. Edward J. Williams was not always a man about whom such remarks might be made as those we have heard here, as one who is not a fit associate for a man of Judge Archbald's standing. He had himself been a man of some substance and influence up there, and had been engaged in a number of important transactions, so that, as he himself said, Mr. William P. Boland had dubbed him "Option" Williams. That is the name he went by to William P. Boland. He was one of the persons who had enabled William P. Boland and Christopher G. Boland to secure that very Marian coal dump, about which we have heard so much, the dump which the Marian Coal Co. was operating near Scranton, and Williams testifies, on page 202 of this testimony, that the Bolands owe him $1,300 and $1,100 out of that transaction. He says, "They told me they were

going to pay me as soon as they get their money out of that property. They can not make a dividend until they get it." So that old man, who I need not say is in very hard lines nowadays, with a sum of $2,500 in the hands of the Bolands, which is due to him, an indebtedness which they did not deny in any degree upon this witness stand, finds himself tied between his desire to tell the truth about Judge Archbald and his desire to say what the Bolands had made him testify to heretofore, and what they wanted him to testify again, so that some of these days he might get that $2,500. That is the reason that poor old man upon this stand made such a sorry exhibition of himself. When he was asked why he went to that office so often and what business he had there, he said, on page 202 of this record, "I always went there to get some of the money they owed me."

That brings me to the paper which has figured somewhat in this hearing—the so-called silent party paper. On the 5th of September, 1911, in the office of William P. Boland—present, William P. Boland, his employee, Mr. Pryor, and his stenographer and niece, Miss Mary Boland—this paper was concocted. It was suggested that the word "concocted" was not a proper word to use in addressing the witness on the stand; but it is an eminently appropriate word to use now, and I use it. William P. Boland, who, as he tells you, at that time had made up his mind that he would get Judge Archbald into trouble, had that old man Williams sign that paper. Now, I want to call your attention to the fact that it was about that time that Mr. Boland testified that he would get letters written and get photographs made and have things done with a view of getting Judge Archbald into trouble. The only thing that has ever been said in this record as any excuse for that proceeding on his part was that Judge Archbald had done something wrong in connection with the case of Peale against the Marian Coal Co. All that the judge had even done in that case was to decide against the Marian Coal Co. a demurrer which they filed to the original bill, which raised the simple question whether the suit should be brought there or in another jurisdiction—in the third judicial circuit of the United States—and had made the usual order fixing the time for taking testimony, as to which there never was any complaint. Mr. Boland gets Mr. Williams to sit down and sign this paper, in which it is stated that nobody but Williams and Boland himself and Robertson and Capt. May know anything about the judge's interest in this matter, and assign a two-thirds interest in the contract to Mr. William P. Boland and to Judge Archbald.

Now, Mr. Williams—the only person whose testimony I refer to about it—said this: On two occasions he said that Judge Archbald had nothing to do with that paper—pages 48 and 160. He said that the judge had nothing whatever to do with it, on pages 160, 161, 162, 163, 196, 197, 198, 211, and 212. On two occasions he swore he never told Judge Archbald about it, and he said that the judge never suggested concealing his name and he never had any authority from the judge to sell to Boland.

And Judge Archbald, I need not remind you, has testified that the first he ever heard of that paper was when it came out in the proceedings before the Judiciary Committee; and yet in spite of that testimony, which is all the testimony there is in this case upon the subject of Judge Archbald's knowledge of that paper, one of the learned managers in his argument here said Judge Archbald accepted it. I know not what could have been in the mind of the manager who made that statement, but he certainly owes it to the Senate, before this case closes, to show by the record where there is any testimony to justify that statement, or else to withdraw it.

Mr. Manager STERLING. Taking advantage of the opportunity, I will state to counsel that I never made any such statement. I said that he accepted the interest in this coal dump which this paper offered to convey. I did not say he accepted the paper.

Mr. WORTHINGTON. I am very much obliged to the manager.

Mr. Manager STERLING. You are entirely welcome.

Mr. WORTHINGTON. I am very glad the explanation has been made, but I am quite sure that while the manager undoubtedly meant to say what he says he did, he is not so reported in the record. Moreover, the statement, as I am reminded by associate counsel, is just as erroneous as now corrected as it was before in the way in which I understood it.

Where is there any evidence that Judge Archbald accepted anything under this paper? This man Williams pulled out of his pocket here a couple of papers when testifying on his direct examination and said, "I have papers here." The learned managers did not ask him, strangely enough—and it was the first time their curiosity had not been aroused upon the production of a paper by a witness—to explain what those papers were. Now, it happened that I had asked Mr. Williams about this paper in Scranton, when I was there preparing for the trial of this case, and that Mr. Williams had told me he had these papers, and that I had suggested to him to bring them along when he came down here. So he produced them. There were two carbon copies of this silent-party paper made, and that old man has carried them in his pocket from that day to this.

Mr. William P. Boland no doubt had an idea that Williams would get Judge Archbald to sign one of them, and he would have Judge Archbald's name to the paper. But the old man kept these copies in his pocket, and when testifying before the Judiciary Committee testified that he had never received a copy of it, never knew of the paper, and yet he testified here later that, as he told us in Scranton, that when he made that statement he had the two copies in his pocket.

I will proceed with the comforting assurance, to myself at least, until otherwise advised, that no member of this tribunal will consider that paper for any purpose whatever as against Judge Archbald.

Now, there is another thing which is sought to be charged against Judge Archbald, as showing that he acted in a manner indicative of guilt in this case, and that is the recall of the so-called Bradley contract. You will all remember that when that sale to Mr. Bradley was hurried through in April last Capt. May, having had the contract drawn by his counsel, the same Judge Knapp to whom I referred some time ago, sent that form of contract to Bradley with a letter, in which he said that he submitted it and wanted to know whether it would meet the approval of Bradley, taking occasion to send also a copy of the letter to Mr. Williams.

On the next day May met Bradley at the station there—the Laurel line station, I think it is said—and told him he wanted that contract back; that they had concluded there were complications about it which would not justify the company in going on with the sale; and Bradley did give it back to them, and that was the end of it.

Now, it is claimed here—I have not heard anything about it in the argument so far, and I do not know whether my distinguished friend Mr. Manager CLAYTON is going to refer to it or not; but there has been a good deal about this said in the taking of the testimony and in the arguments concerning the admission of the testimony, and therefore I conceive that I must address myself to it for a few moments. Judge Archbald came to the city of Washington, as the records of the hotels show, on the 8th day of April of that year. He was here for two or three days at the Hamilton House, by himself, when Mrs. Archbald came here and joined him, and then they went to the Grafton Hotel, on Connecticut Avenue, and were there until the 20th day of April, as the evidence shows.

It was during this time that this transaction occurred. Capt. May testifies that, after having received that contract from his counsel, and while he had it on his desk, a certain Mr. Holden, whose wife was one of the Everhart heirs and claimed an interest in this Katydid dump, came into the office and talked with him about another matter, another part of the culm transaction which the Everhart heirs had with the Hillside Coal & Iron Co., and that he mentioned to Mr. Holden that he had that contract and was about to sell his company's interest in the Katydid dump. Thereupon Mr. Holden at once objected to it and said that he did not want any sale made unless their interests, too, were conveyed. Mr. Holden then went out and got some other parties who were interested as Everhart heirs to write letters to Capt. May objecting to the sale, and himself went to New York, which is only four hours from Scranton, and before taking his train to Boston wrote a similar notice himself, and that that stopped the sale.

Capt. May took these letters to his counsel, and his counsel, as he says, and as Judge Knapp says, advised him not to let the transaction go on.

Senators may wonder what this has to do with this case. Why, it is this: The managers say that at that time there were rumors around Scranton that this investigation was coming on and Capt. May withdrew that contract because he was afraid of the storm that was approaching and of which this is the ultimate result. Capt. May denies it. Judge Knapp, who gave him the advice as to the contract, denies it. Mr. Holden denies that anything of that kind had been heard. The other gentlemen wrote letters at the same time, all denying it; and the evidence is that nothing was known in Scranton about that transaction until the 21st of April, when the Philadelphia North American arrived there with a statement of the charges, and the next day the matter was published in the Scranton papers.

The argument was made, why should Capt. May, of the Hillside Coal & Iron Co., stop this supposedly advantageous sale, because of the complaints that were made in these letters, when he was selling only his company's interest in the

dump? Why, Capt. May explains that, and his counsel, Judge Knapp, explains it, in a most satisfactory way. It appears that the Hillside Coal & Iron Co. was operating to a very large extent coal property there in which the Everharts had a one-half interest, property compared to which this culm dump was a mere flea bite, which they were working for the Everharts, and they were working it under a supposed letter written 25 or 30 years before by a Mr. Darling, who was supposed to have represented the Everhart heirs. Mr. Darling was dead and the letter was lost, and the Hillside Coal & Iron Co. had not a scrap of writing or any authority whatever to justify them except what had been going on in the past. Judge Knapp said to his client, "If you get into any trouble with these Everhart heirs, they may stop all your procedings; they may say 'you will have to pay a higher royalty hereafter; we want you to account for what you have done in the past.'"

But whatever may have been the reason that actuated Capt. May in doing that, or have influenced Judge Knapp in advising Capt May to do it, there is no evidence in this case that Judge Archbald had anything to do with it, and he was in fact in the city of Washington when it occurred.

And, further than that, I call the attention of the managers to the fact that the evidence discloses that Judge Archbald never knew about the Bradley sale until it came out before the Judiciary Committee in May. Mr. Williams says he did not tell him about it; Mr. Bradley says he did not tell him about it; Capt. May says he did not tell him about it; and Mr. Robertson says that he did not tell him anything about it; and Judge Archbald says he knew nothing about it. The Bradley sale was one that was concocted in the office of W. P. Boland, who did know this investigation was going on, for the purpose of rushing through a sale of some kind, so that when the matter should come out it would appear that Judge Archbald had realized some benefit from the transaction.

Mr. Williams, when asked if he ever told the judge about it, said "No"; he said, "No; I did not tell the judge about it, but I did not intend to cheat him; I intended to give him his one-half."

Now, coming to this charge in the last article of impeachment, and charged here by the managers over and over again, that Judge Archbald entered into these arrangements with the railroad companies and concealed from everybody except the railroad officials the fact that he was interested, I propose to address myself for a few moments to the evidence on that proposition.

Mr. May says that he did not know what the judge's interest was; Mr. Brownell says he did no know what the judge's interest was, so far as the Katydid matter is concerned; and Mr. Richardson said he did not know.

So, as to these railroad officials who were concerned in this transaction, they knew only that Judge Archbald for some reason was interested in it; whether for himself or others they did not know. I do not mean in the slightest degree to detract from the effect of the evidence as to their knowledge that in some way he was interested. I rest my argument on this proposition, upon the fact that there was no concealment from anybody else.

Mr. Robertson was informed about it. Mr. Robertson came to the judge's office in the spring of 1911, long before he gave his option, and talked it over with the judge, and when the contract was to be drawn by which Mr. Robertson was to give his option, the judge drew it in his own handwriting and himself witnessed Mr. Robertson's signature.

Mr. Pryor knew about it. He witnessed Williams's signature to the silent-party paper and heard the talk about it in Mr. Boland's office. Miss Boland knew about it for the same reason. Mr. Wells knew about it, because he examined the title for Mr. Conn, and his partners, Mr. Torrey and Judge Knapp, of Scranton, knew about it, because they talked about it with the judge when the title was discussed. Mr. Holden and Mr. Heckle knew about it. Mr. Heckle says the judge came to him and tried to get the address of the Everhart heirs.

And, more than all, in the two letters which he wrote to Mr. Conn, proposing that Mr. Conn should buy this dump, he distinctly says that he is negotiating with Mr. Conn for a dump which he and Mr. Williams are purchasing, distinctly stating in both letters that that is the situation of the case, that he is interested in the purchase. Mr. Conn at once employed Mr. Rittenhouse, and told him that Judge Archbald was interested, and afterwards Mr. Rittenhouse went to talk to the judge about it, and finally, in the contract which Judge Archbald drew, by which the sale to Mr. Conn was to be carried into effect, he stated that it was between Robert W. Archbald and E. J. Williams of the one part and this Laurel line on the other part.

I am surprised that the managers should contend with reference to Packer No. 3 that there was any suggestion of concealment, because everything regarding that dump is in writing, everything coming from Judge Archbald is signed by him, and in every letter that was written in regard to it it appears as though the transaction was for him alone, except that when the formal offer of the proposition was made to the Girard estate to lease that packer dump it was signed by Judge Archbald and the three other persons with whom he was associated at that time in the matter—Mr. Bell and Mr. Petersen and Mr. Thomas Howell Jones.

Mr. Warriner testifies that there was never any suggestion of concealment in regard to it. He said that when Judge Archbald came there to talk to him about it, there were many callers there who heard the conversation. Mr. Kirkpatrick, the agent of the Girard Trust, says that when the judge talked with him about it there was no suggestion of concealment. His nephew, Col. Archbald, says the same thing. Mr. Hellbutt, and Mr. Farrell, and Mr. Petersen, and Mr. Bell, and Thomas Howell Jones all say the same thing. There were 15 or 20 witnesses altogether who testified to this. There is nothing in the world to justify the suggestion that it was a secret matter, but everything showing that it was absolutely open and above board.

Again, it is urged that it was an unusual thing to sell these dumps, so unusual that the fact that the Hillside Coal & Iron Co. agreed to sell its royalty interest in the Katydid to Judge Archbald, and that the Lehigh Valley Coal Co. was willing that the Girard Trust Co. should let Judge Archbald have Packer No. 3 dump, though paying royalties to both. This the managers claim is evidence of some improper influence used in bringing about the result. I therefore propose to refer to that for just a moment.

There is evidence here of at least 15 different transactions of the same kind. Most of them are in regard to so-called fills of the Pennsylvania Coal Co., which was another of the subsidiary companies of the Erie Railroad Co., of which Capt. May was the general manager. But I am not going to take up the time with them because it appears, in the first place, that this same Hillside Coal & Iron Co. only a short time before had sold its interest in the Florence dump, which was owned by the Hillside Coal & Iron Co. and which was in this vicinity—a transaction in which Judge Archbald had not the slightest concern—and sold its interest in that dump for the very reason it was disposing of its interest in the Katydid dump; and that is, that there were these same complications about the title.

And then, as I have already said, there is the fact that this very Katydid dump had been leased; the Katydid coal mine, not the dump only, but the coal mine itself had been leased by this Hillside Coal & Iron Co. to Mr. Robertson, and he had been operating the mine and running the breaker through which the coal from the mine was put, and running a washery which from 1905 to 1908 took the better part of the Katydid culm dump away. So, as to this very dump, the Hillside Coal & Iron Co. had disposed of its interest, retaining only a small royalty, long before Judge Archbald had anything to do with the matter.

Now that is all I propose to say directly about this article No. 1 and article No. 3, which refer to the two, and the only two, culm-dump propositions with which Judge Archbald was connected for the purpose of having any possible interest in them himself, and which belonged to any company which could possibly have any business before the Commerce Court.

I propose now to say a few words about article 13. It seems to have been the purpose of the framers of article 13 to try and combine some of the different transactions which are referred to in the other articles. They say that while Judge Archbald was on the bench as district judge, and while on the Commerce Court bench, he devised a scheme of getting litigants in his court to discount notes for him and to go into the buying of culm banks, and get the companies which might have business before him in the Commerce Court to sell him culm dumps at a low valuation. In the first place, I remark about the illogical character of that article, because there is no pretense that while Judge Archbald was district judge he ever had anything to do with culm dumps, and there is no pretense that after he became a judge of the Commerce Court he ever signed or indorsed a note for anybody to discount. There are two notes in question while the respondent was district judge, and these two culm dumps—Katydid and Packer No. 3—while he was circuit judge.

So there is absolutely no connection between the two sets of transactions.

It appears that in none of the transactions which are involved in all these counts did Judge Archbald take the initiative, save alone in No. 4, the one which refers to the Bruce correspondence. And I noticed in reading last night the brief which has been filed here by Mr. Manager DAVIS, that he has the fairness to call attention to the fact that as to certain of these trans-

actions the judge was induced to go into them by somebody else asking him to do it. As to article No. 1, it appears that William P. Boland got Williams to suggest to him going into it. As to article No. 2, Mr. Watson came to him. As to article No. 3, Mr. Jones came to him. As to article No. 5, Mr. Warnke came to him. As to article No. 6, Mr. Dainty came to him. As to article No. 7, Mr. Rissinger approached him; and as to articles Nos. 8 and 9, John Henry Jones approached him. And so as to the trip abroad with Mr. Cannon, which resulted from Mr. Cannon's letter to Mrs. Archbald—the purse transaction, as it has been called—was brought to him by Judge Searle on shipboard. Lastly, in the matter of the appointment of Mr. Woodward, the initiative was taken by the law which required him to make the appointment.

As to one of these cases, I will add a word in addition to what has been said, and so well said, by my associate, Mr. Simpson, and that is as to article No. 2, about the initiative that was taken in that case. It has been said here over and over again that Judge Archbald tried to induce the settlement of the litigation between the Marian Coal Co. and the Lackawanna Railroad Co. for personal profit. It appears that he went into that matter, in the first place, at the suggestion of Mr. Watson, and he has told how Mr. C. G. Boland came to see him. I suggest that in reference to the charges that have been made against Judge Archbald and the innuendoes that have been thrown out about his allowing these different persons upon whom the managers reflect—Mr. Dainty and Mr. Williams or Mr. Warnke—and Mr. Warnke seems to be considered a person who is not a proper one to be associated with; why I know not; and these other gentlemen who came into Judge Archbald's office—it appears here that Judge Archbald's office always had the open door; the door was always open. Anybody who wanted to come into the office and talk to Judge Archbald could come in; he excluded nobody.

It was never shut except once, so far as the evidence in this case discloses, and that was when Christopher G. Boland came into his office and closed the door, and said, "Judge Archbald, my brother William is going crazy. He is so worked up over these troubles of his about the Marian Coal Co. that if a settlement is not reached and these troubles go on, I think my brother is going to lose his mind." And with tears standing in his eyes, with that door closed so that nobody would hear about his brother's mental condition, he said, "Judge, go to those officers of the Lackawanna Railroad Co. and try to get them to bring about a settlement of the dispute to save my brother."

Two or three times he did that, Judge Archbald said, and Mr. Boland did not deny it. After the negotiations had ceased, after that imploration had been made to Judge Archbald, and the papers returned, and after he said that nothing could be done, Mr. Christopher G. Boland goes to Col. Phillips, the officer of the company, and makes a similar statement himself, and tells him that his brother will lose his mind if this matter is not settled, and he says that his brother can not sleep; that he is suffering from insomnia, and says, "I wish you would settle this case."

And there I want to call attention to one thing that is most remarkable in this question in view of the contention that the managers make about the $100,000 proposition. They say that Mr. Watson was to settle that business for $100,000 and to get $5,000 for himself, and if he was demanding $161,000 that was without their authority or knowledge. But when Mr. Christopher Boland went to see Col. Phillips after those negotiations were all over, including all that Judge Archbald had done, he said to him, when he was trying to get him to save the mine of his brother William. "We will settle if you will give us $75,000 and assume the claims of Peale against the company," which claims had then ripened into a judgment. The claims of Peale amounted to $34,000, and the $34,000 added to $75,000 would make $109,000.

Let me also remind the Senators that it has not yet been made criminal, or even a wrong matter, for a judge to engage in business transactions, and that, so far as the neighborhood of Scranton is concerned, if a man is to go into any business whatever it is almost impossible for him to keep from going into a business that relates to coal properties, because that whole country is built up from the coal mines and the operations that grow out of them.

It is not an unusual thing for judges of the Federal court, or judges of any other court, to be engaged in business, to be stockholders, and to be dealing in real estate.

I want also to call attention to a remark made here by one of the managers in the arguments as indicating the character of Judge Archbald and the feeling that people in that part of the country about Scranton and all that part of Pennsylvania have toward him. The managers said that they had to wring their testimony from unwilling witnesses. Well, I think it is true that out of a hundred-odd witnesses who were examined here, nearly all of whom were from that region of the country and nearly all of whom knew Judge Archbald or knew about him, with the exception of the two Bolands they were all his friends.

I ask you to add that to the character of the evidence we have here and which we had to stop producing because there was so much of it and it was taking up the time of the Senate with what was not denied, as showing that if they want to go anywhere to get witnesses who are not friends of Judge Archbald they must go to some place where he is not known.

I wish to add a word to what was said by my associate yesterday in regard to article No. 4, which relates to the Bruce correspondence. I, like him, do not undertake to say that what Judge Archbald did in that case in writing to Bruce and in not sending copies of the correspondence to counsel on the other side was not a mistake on his part, but I do maintain that it is nothing for which he should be adjudged a criminal or for which he should be impeached in this proceeding.

I think every Member of this body will take notice of the fact that here in Washington in the committee inquiries and in inquiries in the Senate and before the various commissions, of which we have so many, the proceedings are not conducted strictly in the manner in which lawyers usually proceed in the ordinary courts of justice, and that the members of those bodies consider that they have the privilege of getting at information in any way that they please when their object is only to get at what are the facts and to do what is right.

In this very case it appears that so notable a body, a body made up of such able and public-minded and fair-minded men as the Interstate Commerce Commission, have done, without it occurring to anybody that they might be criticized, a thing which is infinitely more objectionable than anything that was suggested against Judge Archbald in relation to the Bruce matter. The Marian Coal Co. had filed in the Interstate Commerce Commission this petition, which was referred to in what was known as the rate case, in which it charged not only that the railroad company had charged excessive rates, but that they were trying to ruin the Marian Coal Co. They had deprived them of their water; they had set fire to their dump, burning their own coal so as to burn the coal of the Marian Coal Co. That is the charge made. The record is here. The petition was put in evidence, and when William P. Boland came down to Washington in January of 1912, as he tells you himself, he went to that commission not for the purpose of making any charge against Judge Archbald, but for the purpose of showing to that commission that the railroad company, the opposite party in that litigation, was trying to ruin him; that they had gone to Judge Archbald and Judge Witmer and Mr. Loomis, and Heaven knows to whom, to hurry along the Peale case, which was a suit against the Marian Coal Co., and get a judgment against it and take its property and ruin it so it could not go on with the litigation before the Interstate Commerce Commission.

When Mr. William P. Boland came down to make that statement to Mr. Meyer, a member of the Interstate Commerce Commission, did he send for the attorneys of the Lackawanna Coal Co.? When he received a letter from Mr. Reynolds about the matter, or the letter from Boland, which is in evidence, written to Mr. Cockrell, saying that he was getting more evidence along the same line which he would send to the commission pretty soon, did they send notice of that correspondence to the Lackawanna Railroad Co.? No; Mr. Meyer said they got Mr. Reynolds, the attorney of the Bolands, and Mr. William P. Boland himself to come to Washington on the day that the Rate case was to be heard before the Interstate Commerce Commission, and they said to them outside of the court room, "Do not bring up this matter of Judge Archbald and Judge Witmer and these other complaints in the hearing to-day; keep quiet about that;" and it was kept quiet, but as soon as the hearing was over then, pursuant to an arrangement previously made by Commissioner Meyer, Boland and Williams were taken up to the Attorney General's office.

I do not say that for the purpose of criticizing those gentlemen. They were doing what they thought was perfectly right and proper. They are all honorable men with whom I have the pleasure of being acquainted, and doubtless you know them; but it was a thing done in that way in a case that was pending in that court where the people on one side were heard about the most vital elements in that case without the other party knowing anything about it.

I have here a case which was decided in the Supreme Court of the United States a few days ago which illustrates what I am saying. It is a case of the United States against The Baltimore & Ohio Southwestern Railway Co. It is in volume 226 of the Supreme Court Reports, and I read from page 20 of this

pamphlet. It is a case which had come up to that court from the Interstate Commerce Commission:

It is unnecessary to consider objections to the conclusion of the commission that it was safe and reasonably practicable, etc., to establish the switch. We remark that it is stated in the commission's report that they base their conclusion more largely upon their own investigation than upon the testimony of the witnesses. It would be a very strong proposition to say that the parties were bound in the higher courts by a finding based on specific investigations made in the case without notice to them.

So, there the Interstate Commerce Commission, in pursuance of the public and important duties devolved upon it, which it has exercised so honestly and so greatly to the public benefit, conceived that it had the right to make an investigation and reach a conclusion upon information obtained by an investigation which the parties knew nothing about and had no opportunity to meet. Yet I suppose it never occurred to anybody that the members of the Interstate Commerce Commission should be impeached, much less be held to have done something of which they ought to be ashamed when they did that. It was a mistake, but a mistake only, and in that way the Supreme Court treated it.

But, Senators, there has something occurred in this Chamber in the trial of this case which is more important than that, and which illustrates what I am saying. You will find in the record of this case, on page 809, that growing out of a suggestion of the Senator from California [Mr. WORKS] there was a discussion or colloquy here as to why the briefs had not been filed which the Senator understood the Senate had directed should be filed. Counsel had not so understood it and the briefs had not been filed. Mr. Manager CLAYTON thereupon said, "I have handed copies of our brief to some of the Senators." We were not informed of that fact. This tribunal before which I am speaking is a court. It is to decide upon questions as a court decides upon them, and the question involved is one of as great interest to my client as anything that will ever happen to him in this world can possibly be.

The managers are the counsel on the other side, and they had handed to our judges in this proceeding copies of their brief. What the brief was I knew not. I do not know to this day. I make no complaint about it. It was perfectly proper to hand it to the judges if they chose to do so. It is a perfectly proper thing for the judges to receive it; but I should like to know how the manager can stand here and ask you to impeach Judge Archbald for having done in the case of the Louisville & Nashville rate case what he has himself done in this very case.

In regard to the note which is referred to in articles 8 and 9, I call attention to a slip of the tongue which my brother Simpson made. It may have attracted the attention of some Members of the Senate when he said in reference to that $500 note that the judge testified that Jones told him either that the note had been or would be presented to the Bolands and they had refused to discount it. What the judge testified to, and what he says in his answer, is that Jones at some time told him that the note had been or would be presented to the Bolands, and nothing more. His testimony is that he never afterwards heard what was done, and the Bolands say that they never communicated with him on the subject. Williams says the same thing, and Jones says the same thing.

Now, as we are reaching the closing hours of this case, Senators, I want to devote a few words to the history of it. When a discussion arose in the course of the trial about the charge which we are making against the Bolands, as the managers put it, the managers said they wanted the Senate to know something about the history of this case, and they put in a little of that history. I propose to call attention to what is before you in regard to that matter to show how it was that the feeling which at one time existed against Judge Archbald in reference to this matter was aroused, improperly, I will not say, but aroused by the belief of the public that things existed which were absolutely without any foundation whatever.

The managers say that in the opening statement counsel for Judge Archbald charge that this was a conspiracy on the part of the Bolands, and that we are trying to defend Judge Archbald on that ground. If the managers will read the opening statement they will find that there is nothing in it to justify that averment. What I said then was that these proceedings began by charges that were made by William P. Boland, and that they arose out of his disordered mind and had no real existence. I know that it takes two to make a conspiracy, and the managers, of course, know that, too; and they know that the charge could not be properly construed into a charge of conspiracy between William P. Boland and anybody else. I make no charge of anything wrong against William P. Boland. I look upon it now as I looked upon it then, as the act of a man whose brain is in such a condition that he is to be pitied, not to be blamed, and I think that what took place in this case justifies me in making that statement.

Now, mark the connection of Boland with this case. He had got into his mind, without, as it appears here, the slightest foundation of any kind, that Judge Archbald, while on the district court hearing the Peale case, had done something against him. When you look at what he has testified to here, he says the judge sent the case to New York. Of course, that is simply an hallucination. There were some depositions, it appears, taken in New York by counsel on both sides by agreement; but he got it into his head that the judge in some way had transferred that case to New York. That is the thing which he says made him undertake to see what he could do in getting the judge into trouble. He found the Katydid dump, and he told Williams about it, and then said to Williams, "You go to Judge Archbald and get him to give you a letter to Capt. May." Then, after he had gotten the letter to Capt. May and the sale was not made, he said, "You go to Judge Archbald and get him to go to the New York office of the Erie." When the option was made out, which Judge Archbald prepared in his own handwriting, with Robertson, by which Robertson agreed to sell his interest for $3,500, Judge Archbald drew that, as I said, and witnessed it; and gave it to Williams to keep. Williams showed it to Boland, and Boland did the extraordinary thing of getting the grantee to acknowledge it. Then he took it over to the recording office and recorded it, and paid for recording it. Then he took a photograph of this silent party paper which he himself had concocted in his office, and got any letters Williams had and had them photographed; and then he came down to the Interstate Commerce Commission.

I invite the attention of the Senate to what took place when he came here and how this prosecution began. It is on page 702 of the record in this case. I ask Senators to remember that this paper was offered in evidence by the managers for the purpose of letting the Senate know that it was not true, as we charged, that this proceeding was begun by anything that William P. Boland did.

Now, see this extraordinary document, a document that a member of the Interstate Commerce Commission took to the President of the United States as representing the result of an investigation that had been made in the office of the Interstate Commerce Commission. He says, in the first place, that a demurrer had been filed in the Peale case; that thereafter the $500 note that is referred to in the evidence was presented to the Bolands for discount; that they refused to discount it, and that thereupon Judge Archbald overruled the demurrer.

It is established here, so that nobody disputes it, that the demurrer had been overruled three months before the note had any existence, and that the statement was the creation merely of the disordered brain of William P. Boland. He himself said on the stand, "I have always believed that note was before the demurrer was overruled." Everybody agrees it was not so. The bank officers were brought here, and you have the record of the bank where it was first discounted, and are told the date when it was discounted, which was in December, 1909. The note was dated in December and the demurrer was overruled in the previous September. Then, listen to this. The judge is represented in this Cockrell statement by "A."

"A." went to New York and saw Mr. Brownell, vice president of the Erie road, who telephoned Mr. May, superintendent of the Hillside company, to give Williams an option on the culm bank.

Now, think of that. That was the statement that originated in the same disordered brain.

"A." returned to Scranton and made out in his own handwriting and signed as witness an option giving Williams the right to purchase the culm bank for the sum of $3,500.

Can you imagine anything more grotesque, more absolutely untrue and ridiculous than that statement? The judge went to Brownell; Brownell went to the telephone and telephoned to May to sell that property for $3,500. The judge takes a train and comes back to Scranton and goes over to see May and writes out the option for him to sign; the whole statement is without the slightest excuse, except that the man who made it was a crazy man.

I will not go into all the details of it. There are other things almost equally as bad. Finally he says:

Boland says the litigation referred to by Seager is the suit filed by Peale and that Seager has inside advance information of the decision of the court, which has not yet been handed down.

The court had decided the case. Judge Witmer had decided it in the previous August. He had decided that Peale was in the right in the case and had given a perpetual injunction against the Marian Coal Co. in favor of Peale, and the question whether the amount which was to be paid in the way of damages should be $18,000 or more was the only thing that was left open.

The excuse is made for that proceeding by Mr. Meyer that it was prepared by Mr. Cockrell, and that if Judge Witmer's name was left out of it or there was anything else wrong about the statement it was Mr. Cockrell's mistake. We brought Mr. Cockrell here to see why it was that he had prepared a letter to be taken to the President making charges against a Federal judge, whose name until that time was untarnished, by such an extraordinary document as that. He said that Boland was there in the morning and made a statement to him. He did not make any notes of it, but in the afternoon he jotted down, according to his recollection, what had been said. That statement is taken to the President of the United States—that misstatement, I should say. The President directs an inquiry to be made. The Attorney General has the matter in charge. He sends Mr. Wrisley Brown up to Scranton to make an investigation. He makes his ex parte investigation, Judge Archbald knowing nothing about it, and it being intentionally kept from him for the reason, no doubt, that Mr. Wrisley Brown did not want to have this matter get out and injure the judge's reputation if there was nothing in the charges.

It comes back to the Attorney General, and the Attorney General in a formal paper, when the papers in this case were sent to the Judiciary Committee of the House, said:

I had proceeded so far in this investigation that I intended to notify Judge Archbald and ask him to explain, but the resolution passed the House calling for the papers, and therefore the investigation proceeded no further.

So the matter went to the House.

Now then, in the course of this proceeding, in the early days of August last, by Mr. Manager CLAYTON, when we were considering whether we should be forced into a trial of this case at that time, and again during the argument of the case by Mr. Manager WEBB, day before yesterday, you have been impressed with the fact that the judgment of the House of Representatives in this case in favor of impeachment was practically unanimous, the only vote against it being that of Mr. FARR, who comes from the Scranton district and who, like so many of the witnesses here, knew Judge Archbald personally.

I never heard it suggested, and I do not believe that Mr. Manager CLAYTON, when he was district attorney in the district down in Alabama, ever heard it was a proper thing in trying a case before a jury to try to urge the jury to convict by telling them that the grand jury were unanimous in reaching a conclusion in the case.

I think it was a great mistake on the part of Mr. Manager CLAYTON and on the part of Mr. Manager WEBB to try to affect your action here by telling you that in the hearing which was had before the House of Representatives the conclusion that was reached was unanimous.

I desire to call your attention to a few things that the managers here said to the House of Representatives, by which they obtained that unanimous verdict. Mr. Manager CLAYTON, on pages 40 and 41 and 113 of the first volume of the proceedings in this case, said to the House that the proceedings were ex parte.

On page 65, Manager STERLING told them the same thing. On page 67, Mr. Manager WEBB said the same thing.

I especially call attention to what appears on pages 100 and 111 of this record. On page 100, Hon. Mr. HOWLAND, now Mr. Manager HOWLAND, said:

The proceedings thus far have been ex parte, and every friend of Judge Archbald on this floor owes it to him at this stage of this proceeding to vote in favor of this resolution to-day, in order that he may have a full and free opportunity before the bar of the Senate to prove, if he can—and I trust in good faith and in all sincerity that he can—that he is absolutely innocent of the prima facie case which is made in this resolution.

On page 111, I read from what was said not by one of the members of the committee but by Mr. AINEY:

In voting to-day I do so upon the ground frequently expressed here in debate, that this vote is not upon the guilt or innocence of the accused, but I cast it in the sympathetic hope and belief that in the tribunal provided by the Constitution, under the fullest investigation which will there be had, his name will be cleared and his fame shine forth as brightly and as unsullied as in the days of yore.

So that some of the managers on the part of this impeachment appealed to the House that every man there who was a friend of Judge Archbald's should vote for the resolution sending the case here, not because it was found that Judge Archbald was guilty of anything or that it was the expression of the opinion of the Members of the House of his guilt or innocence, but to give him an opportunity for a hearing where the question of his guilt or innocence might be determined.

But more, Mr. Manager STERLING said to the House that Mr. Williams saw the brief in the Lighterage case on the judge's desk on the 31st day of March. So testified Mr. Williams in this case. Mr. Williams said that he took that letter to Mr. May on the 31st day of March, the day it is dated, and he went back to Judge Archbald's office on that day or the next day, and then it was that he saw these papers, whatever they were, relating to the Lighterage case, and had a conversation with Judge Archbald about that case. The Lighterage case did not get into the Commerce Court until the middle of the following month of April. By no possibility could there have been a brief, list of cases, or anything else relating to that case on Judge Archbald's desk on the 31st day of March or anywhere near that time.

Let me, while I am speaking about that lighterage matter, also remind the Senate that some time in August, 1911, Mr. William P. Boland conceived the idea that he would have everything that E. J. Williams said preserved. So he directed his stenographer, Mary Boland, every time Williams came there, to take down in shorthand or make a record of everything he said. She was here with those notes under our subpœna, which show that on the 18th day of September Williams said he had been at Judge Archbald's office and had seen on the judge's desk a brief in the Lighterage case, and on the 28th day of September those notes show that Williams came in in the morning and said he was going over to see the judge about that case, and later in the day he came back and said he had talked with the judge about it. And the undisputed evidence discloses that the trial list or docket of the Commerce Court containing the word "lighterage" in connection with that case was sent to Judge Archbald on or about the middle of September.

Now, that was after the judge had been to Mr. Brownell, and it was long after Capt. May had written the letter in which he said he would recommend the sale of the Katydid dump for the sum of $4,500 to his company.

It is impossible, in the first place, that Judge Archbald could have said anything to Mr. Williams about this case at the time Williams said he did, and it is impossible, if the conversation took place at the time the notes of Mary Boland indicate it did, that it could have had any effect upon the action of the Hillside Coal & Iron Co.

In this connection I wish to refer to the fact that it appears that Mr. William P. Boland got Williams to go into the room which is next to Judge Archbald's office, the room through which you go to get into his office, occupied usually by his clerk or a subordinate of some kind, and to stand at that window and show him the lighterage paper, whatever it was. That is Boland's story.

I suggest to the Senate whether that does not indicate that this whole lighterage business is one of those things which was concocted by the unbalanced mind of William P. Boland, and that as a matter of fact Williams never had any conversation with the judge about it at any time or any place. If he ever did have any such conversation, it occurred long after the option, or what they call the option, had been given to Mr. May, and it occurred after the Lighterage case had been decided by Judge Archbald and the other members of the Commerce Court, and while the case had gone up to the Supreme Court of the United States on appeal from their judgment.

But more extraordinary still, Senators, is the statement which was made to the House by Mr. Manager STERLING and which has heretofore been referred to in the taking of testimony in this case, on page 59. You will bear in mind that Judge Archbald never knew anything about the Bradley transaction. He was in Washington when it occurred; Capt. May was the person who sent the contract to Bradley and recalled it at the station. This is what Mr. Manager STERLING recollected of that transaction when he was informing the House what was the evidence against Judge Archbald:

That—

Referring to the contract—

was sent to Bradley on one day, and the next day Archbald sees Bradley at the depot and asks him to call that off, that some complications have arisen, and they had better stop the negotiations, and also writes him a letter to the same effect, in which he tells him the transaction will be withdrawn on account of certain complications. No one knows what complications were referred to, excepting there had appeared in the newspapers in the meantime this scandal about Judge Archbald's relations with persons who had litigation in his court.

The most extraordinary travesty on evidence that I ever heard stated in any court anywhere. Instead of stating that Judge Archbald never had anything whatever to do with the Bradley transaction and that Capt. May had recalled the contract because of the contention growing out of letters written to him by adverse claimants and on the advice of his counsel had withdrawn it, to tell the House that Judge Archbald was making the sale to Bradley, and that after the thing had been published in the newspapers, which was not until 10 days after the contract was withdrawn, the judge went and recalled it, thereby practically telling the House that Judge Archbald had confessed his guilt.

There are other things in the same line that I thought of referring to, but I shall not take up your time in that way. Those are sufficient. But I ask the Senate to consider how much weight should be given to the fact that the President of the United States thought worth while to have this matter investigated, when his action was brought about by presenting to him a paper obtained in the way that this Cockrell statement was prepared, containing a tissue of misstatements so erroneous that they were absurd; when that paper was made upon the statements of a man who was clearly out of his mind, and made without any investigation to determine whether he was telling the truth; when the Judiciary Committee took that inquiry out of the hands of the executive department of the Government just at the time when Judge Archbald was to have an opportunity to defend himself and to show what the real facts were? I ask what weight shall be given to the fact that practically all the Members of the other House voted in favor of these impeachment articles, when that vote was obtained upon the erroneous statements which the managers so innocently made to the House, bearing so terribly against Judge Archbald and so entirely inconsistent with the real facts? Further, what consideration should be given to that vote when it was obtained upon the statement made to the House by three members of the Judiciary Committee, who are here to-day as managers, that it was not to be considered as a vote upon the guilt or the innocence of Judge Archbald, but that every friend of his in that House should vote for it so as to send the case to the Senate, where he should be given, what he had never before had, an opportunity to show what the facts were?

It is not until now, when the last of his counsel to speak is closing the argument for the respondent, that the Senators who are doing me the honor to listen to me know what the facts in this case are, because it is simply impossible for anybody, except those who have been familiar with the case heretofore, who have gone over the case with the witnesses before they came on the stand, and who have examined and classified the evidence and arranged it as we have had to do for your information, to know what the facts are. I ask you now, after the evidence is all in, to see how pitifully poor are the real facts against Judge Archbald in this case, and whether you will consider that you will throw aside the language of the Constitution, which says that in order to convict you must find that he has committed a crime or something that is punishable, and that you will say that upon those transactions which are so trivial and which any man in his condition, however honest and upright, might have innocently done—I ask whether you will say that you will find him guilty and deprive him of his office? I take my seat with the conviction that you never will do it. I can say no more.

ARGUMENT OF MR. CLAYTON, ONE OF THE MANAGERS ON THE PART OF THE HOUSE.

Mr. Manager CLAYTON. Mr. President, I congratulate the Senate that the unusual and painful duty which has been devolved upon this body will soon be fully discharged, and I felicitate the managers and the counsel for the respondent as well as the respondent himself that our labors in regard to this case are about at an end.

Mr. President, before I shall discuss the propositions involved in this case, either of law or fact, I desire to call the attention of the Senate away from that case which the distinguished counsel for the respondent has tried to make before the Senate. If a stranger had appeared in this Chamber so long consecrated to public service by the acts of the great men who have filled it from time to time as the representatives of the States of the federated Union, that stranger might have imagined that the managers of the House of Representatives were themselves being lectured for misconduct rather than that a judge was on trial for misbehavior. I need not say that there was no impropriety in the managers handing to Senators at their request the brief embodied in the report which was made by the Committee on the Judiciary of the House of Representatives to the House of Representatives, carrying the identical views expressed here and which have been but little added to by the brief which has been formally presented on behalf of the managers to the Senate.

The gentlemen who represent the respondent are oblivious of the fact that it is highly proper for any Member of the House, or even any humble official of that body who has charge of the matter, to hand to any of you or to anybody else a public document. I need not dwell further upon that. The Senate will readily draw the distinction between that act and the secret procurement by a judge of a brief from a railroad attorney to be used in a case pending then before his court, delivered to him at the instance of the judge through the medium of private correspondence, never permitted to be seen or examined by anyone else.

Mr. President, the managers were also lectured by the counsel who first addressed you for the respondent. He animadverted on the manners of the managers of the House. Everything that the managers have done in this case, from its very inception, has a precedent for it. The language used by Mr. Manager WEBB, which the counsel but a short time ago criticized, was in substance used by former managers in this august tribunal. I only refer to this for the purpose of showing to the Senate what I now assert, that the effort has been on the part of the respondent and his honorable counsel from the very beginning to mystify this case, to obfuscate the questions of law and fact, if, indeed, there be necessary facts which are not admitted by the respondent in his answer and on the stand.

Mr. President, we are not trying the managers of the House of Representatives; we are not trying Christy Boland, whom the judge addressed as "Dear Christy"; we are not trying William P. Boland; we are trying a high judicial officer for a breach of a high public trust. This trustee, clothed with authority, with power, with a discretion in the administration of justice that no legislative body can have, has been unfaithful to this position of trust; he has not had due regard for the high nature of the place of power and confidence, fraught with good or ill as he might discharge his public duty. We have come here, Mr. President, to try this judge for his misbehavior while clothed with this high and responsible privilege—for it is a privilege conferred upon him by the political power of the Government; and, more than that, it was his duty to be the unswerving and irreproachable minister of public justice.

Oh, all this effort to divert the attention of the Senate from the real case on trial is the trick of the criminal lawyer! And let me call attention to the senseless refinements and useless technicalities so frequently interposed by the counsel for the respondent—the gratuitous interjections of remarks in this case by the counsel—and the general conduct of the excellent gentlemen who have represented this respondent, to show that they are adepts in the art of defending common criminals, and that every trick and every device short of positive offense has been employed by these honorable gentlemen. I do not complain, for I wanted the respondent to have the benefit of all that the ingenuity of the legal profession could afford him. Certainly, Mr. President, he has been ably defended.

Permit me to further call the attention of the Senate to the design of the counsel by their ingenuity to direct your attention away from the case that you have before you. They have undertaken to confuse in the minds of the Senate personal rights which belong to the defendant under the Constitution—under the Bill of Rights—with a political privilege which is not covered by the Bill of Rights. The right of free speech, the right of trial by jury, the right of freedom of conscience are protected by the Bill of Rights, and it is not within the power of this great body to take from the humblest citizen of the land any of those rights. We are not trying that sort of a case. The expert criminal lawyer always likes to try some imaginary case; but, in the language of the frontier, this tribunal will bring these gentlemen back to the lick log and will try this case which the Senate has under consideration.

I have said that this judge holds a position by virtue of political privilege—a privilege, and not a right. It is the enjoyment of a trusteeship, of a privilege, coupled with which privilege is a solemn duty. That is what is involved in the case we have before the Senate.

Mr. President, much confusion has been attempted to be created by the counsel for the respondent in their effort to show that this is a court in the ordinary acceptation of that term. Whatever name you may call this body sitting here now, whatever functions they may discharge, it can not be said to be a court as that word is employed in the Constitution or understood by the ordinary man. It is more than a court. Under our Government it is clothed with the highest and most extraordinary powers of any body or any functionary or any agency of our Federal Government. Your powers here invoked are political in their nature. Mr. Bayard announced that doctrine in the first impeachment case—that of Blount. Every commentator, including Story and all the rest, have quoted it with approval, and should any man deny it he would at once confess himself ignorant of the history and the law of impeachments. Why is it political? Read the Constitution, and you find in Article III that:

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

I desire here, for the purpose of completing the argument or suggesting a way that it may be completed, for in view of the limited time at my disposal I shall take the license that poets indulge in of making the suggestion of the idea to the mind of the Senate and with confidence leave it to your learning and intelligence to develop the argument.

Said Mr. Sumner:

By the National Constitution it is expressly provided that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," thus positively excluding the Senate from any exercise of "the judicial power." And yet this same Constitution provides that "the Senate shall have the sole power to try all impeachments." In the face of these plain texts it is impossible not to conclude that in trying impeachments Senators exercise a function which is not regarded by the National Constitution as "judicial," or, in other words, as subject to the ordinary conditions of judicial power. Call it senatorial or political, it is a power by itself and subject to its own conditions. (The Works of Charles Sumner, Vol. XII, E. 415, 6 S., 93, p. 321.)

Again, Mr. Sumner said:

Discerning the true character of impeachment under the National Constitution, we are constrained to confess that it is a political proceeding before a political body with political purposes; that it is founded on political offenses, proper for the consideration of a political body, and subject to a political judgment only. Even in cases of treason and bribery the judgment is political and nothing more. If I were to sum up in one word the object of impeachment under the National Constitution, meaning what it has especially in view, with its practical limitation, I should say expulsion from office.

Further, Mr. Sumner said:

There is another provision of the National Constitution which testifies still further and, if possible, more completely. It is the limitation of the judgment in cases of impeachment, making it political and nothing else. It is not punishment, but protection, to the Republic. It is confined to removal from office and disqualification; but, as if aware that this was no punishment, the National Constitution further provides that this judgment shall be no impediment to trial, judgment, and punishment, "according to law." Thus again is the distinction declared between an impeachment and a proceeding "according to law." The former, which is political, belongs to the Senate, which is a political body; the latter, which is judicial, belongs to the courts, which are judicial bodies. The Senate removes from office; the courts punish. I am not alone in drawing this distinction. It is well known to all who have studied the subject. Early in our history it was put forth by the distinguished Mr. Bayard, of Delaware, the father of Senators, in the case of Blount; and it is adopted by no less an authority than our highest commentator, Judge Story, who was as much disposed as anybody to amplify the judicial power. In speaking of this text he says that impeachment "is not so much designed to punish an offender as to secure the state against gross official misdemeanors; it touches neither his person nor his property, but simply divests him of his political capacity."

Samuel J. Tilden, in his Public Writings and Speeches, volume 1, page 474, said:

Impeachment, as it exists in the United States under the Federal Constitution and the State constitution, is a procedure for the removal from office of a public officer if cause therefor is found to exist. Its object is not to punish the individual but to protect the people. Even a disqualification afterward to hold office, if it be superadded to the removal, is more preventive than penal.

So we form a correct conception of what this tribunal is, its purposes, and its powers. Again, if it be necessary, let me ask from what power did this judge derive that trust which he has violated? Did he derive it from the judicial power? No. It was derived from the exercise of a political power. The President, exercising political power, nominated him for this office and the Senate of the United States, with its power of disapproval, with its vitalizing power of confirmation, before he could become a public officer, exercised not a legislative function, not a judicial function, but brought into operation a power which, in its very nature and in any just conception you can take of it, was a political power.

Now, Mr. President, I say this because I want to get away from the murky and unhealthful atmosphere of a police court, and I want to try on a higher plane this great cause involving the rights—the civil rights—the power, and the majesty of the American people on the one side and on the other the puny privilege of an unfaithful judge to desecrate his official position. It is political. Why? Because under representative institutions that is the only way under our Constitution that the political power exercised in the creation of a Federal judge can be performed. Under the State constitutions, or most of them, that political power is exercised by the people in their primary capacity when they select by ballot their judges to preside over them and administer public justice.

So we come at once to a correct conception of the purpose of impeachment, a correct conception of the law of impeachment. My associates have given you the authorities upon this proposition. They can not be answered. Oh, the effort is made here, as has been made in all other cases and will likely continue to be made in the future until—and God forbid—and I say it reverently—that that time shall come—the remedy of impeachment shall be decided by this august tribunal and the American people to be futile. Senators, will you tell the American people that this remedy is futile? If you do, they will find an effective remedy to drive from place and power the unworthy judge.

Referring to the function of impeachments, Rawle, in his work on the Constitution (p. 211), says:

The delegation of important trusts affecting the higher interests of society is always, from various causes, liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign States, or the baser appetite for illegitimate emoluments are sometimes productive of what are not unaptly termed "political offenses" (Federalist, No. 65), which it would be difficult to take cognizance of in the ordinary course of judicial proceeding.

The involutions and varieties of vice are too many and too artful to be anticipated by positive law.

Mr. President, every court in this land is clothed with that indefinable power—judicial discretion; more extraordinary, more far-reaching, more hurtful in case of abuse than any power which is vested by the Constitution in the Senate as a legislative body or as an organization for the trial of an impeachment case. And yet judicial discretion must exist, and yet the power of removal must exist. "Nature abhors a vacuum." This great Government of ours can not be paraded before the people as being powerless to remove a puplic official from office. There is no such vacuum in the power of government. There can be no such hiatus in the power of a successive government.

I shall quote from one of the earliest writers, one of the most frequently quoted, and so far as my reading has allowed me to know, this authority has never been quoted except with approval. I refer to Wooddeson's Lectures.

It is certain that magistrates and officers intrusted with the administration of public affairs, may abuse their delegated powers to the injury or ruin of the community and at the same time in offenses not properly cognizable before the ordinary tribunals. The influence of such delinquents, and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, become suitors for penal justice; and they can not consistently, either with their own dignity or with safety to the accused, sue to any other court but that of those who share with them in the legislature.

On this policy is founded the origin of impeachment, which began soon after the Constitution assumed its present form * * *. (P. 501.) Such kind of misdeeds, however, as peculiarly injure the Commonwealth by the abuse of high officers of trust, are the most proper and have been the most usual grounds for this kind of prosecution. Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duty of his office, if the judges mislead their sovereign by unconstitutional opinions, if any other magistrate attempt to subvert the fundamental laws, or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision. So, where a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safeguard of the sea, an ambassador to betray his trust, a privy counselor to propound or support pernicious and dishonorable measures or a confidential advisor of his sovereign to obtain exorbitant grants or incompatible employments, these imputations have properly occasioned impeachments, because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offenses, or to investigate and reform the general polity of the state. (Wooddeson's Lectures on Laws of England, 3 volumes in 1, p. 499.)

I shall also quote, now, from the Fifteenth American Law Register, pages 646–647, where Judge William Lawrence said:

Whatever "crimes and misdemeanors" were the subjects of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are therefore subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution.

The framers of our Constitution, looking to the impeachment trials of England and to the writers on parliamentary and common law and to the constitutions and usages of our own States, saw that no act of Parliament or of any State legislature ever undertook to define an impeachable crime. They saw that the whole system of crimes, as defined in acts of Parliament and as recognized at common law, was prescribed for and adapted to the ordinary courts.

They saw that the high court of impeachment took jurisdiction of cases where no indictable crime had been committed, in many instances, and there were then as there yet are, "two parallel modes of reaching" some, but not all, offenders; one by impeachment, the other by indictment.

In such cases a party first indicted may be impeached afterwards, and the latter trial may proceed notwithstanding the indictment. On the other hand, the King's bench held in Fitzharris's case that an impeachment was no answer to an indictment in that court.

The two systems are in no way connected, though each may adopt principles applicable to the other and each may shine by the other's borrowed light.

With these landmarks to guide them, our fathers adopted a Constitution under which official malfeasance and nonfeasance, and, in some

cases, misfeasance, may be the subject of impeachment, although not made criminal by act of Congress or so recognized by the common law of England or of any State of the Union. They adopted impeachment as a means of removing men from office whose misconduct imperils the public safety and renders them unfit to occupy official position.

Mr. President, I shall also read from Pomeroy on the Constitution, pages 608–609:

We must adopt the second and more enlarged theory, because it is in strict harmony with the general design of the organic law, and because it alone will effectively protect the rights and liberties of the people against the unlawful encroachments of power. Narrow the scope of impeachment, and the restraint over the acts of rulers is lessened. If any fact respecting the Constitution is incontrovertible, it is that the convention which framed, and the people who adopted it, while providing a government sufficiently stable and strong, intended to deprive all officers, from the highest to the lowest, of any opportunity to violate their public duties, to enlarge their authority, and thus to encroach gradually or suddenly upon the liberties of the citizen. To this end elections were made as frequent, and the terms of office as short, as was deemed compatible with an uniform course of administration. But lest these political contrivances should not be sufficient, the impeachment clauses were added as a sanction bearing upon official rights and duties alone, by which officers might be completely confined within the scope of the functions committed to them. We can not argue from the British constitution to our own, because the English impeachment is not, nor was it intended to be, such a sanction. But the English law recognizes a compulsive measure far more terrible, because far more liable to abuse than impeachment. What the British Commons and Lords may not do by impeachment, the Parliament may accomplish by a bill of attainder. If the Commons can only present, and the Lords can only try, articles which charge an indictable offense, there is no such restriction upon their resort to a bill of attainder, or of pains and penalties. The Constitution has very properly prohibited this species of legislation; but the constitutional impeachment was intended to partially supply its place under another and better form by introducing the orderly methods of judicial trial, and by requiring a majority of two-thirds of the Senate to convict.

The same considerations will apply with equal force to that branch of the argument which is based upon the phrase "high crimes and misdemeanors." Even had the words been "felonies and misdemeanors," we should not be obliged to take them in a strict technical sense; they would be susceptible of a more general meaning descriptive of classes of wrongful acts, of violations of official duty, punishable through the means of impeachment. But in fact the language used can not be reconciled with the assumed technical interpretation. The phrase "high crimes and misdemeanors" seems to have been left purposely vague; the words point out the general character of the acts as unlawful; the context and the whole design of the impeachment clauses show that these acts were to be official, and the unlawfulness was to consist in a violation of public duty, which might or might not have been made an ordinary indictable offense.

Mr. President, we come now to the expression employed in the Constitution—"treason, bribery, and high crimes and misdemeanors." "Treason" needs no definition; "bribery" needs no definition; but you can nowhere find the meaning of the term "high crimes" or the term "misdemeanors," as they are there used, except by a resort to the English parliamentary law and to the American precedents which have followed that law.

But the counsel say you must go to the English common law, thereby meaning the English municipal law, which has been defined to be a rule or rules "commanding that which is right and forbidding that which is wrong." No, no, Mr. President. No commentator has said that. No adjudicated case has held that. The correct doctrine is that for the true interpretation of those words you go to the body that invented and employed them. Where else would you go? There is the fountain source. I go to the ordinary courts of law for the common law of Great Britain.

The common law; what is it? The decisions, opinions, judgments, and precedents of common-law tribunals. What law court in this country or in Great Britain, sitting as a law court, building up and adding to and interpreting municipal law, ever dealt with the question of what constituted high crimes and misdemeanors or what constituted an impeachable offense? To interpret and expound that law has never been a function of any court. Impeachment has been always, when employed by our British ancestors down to this good hour, a proceeding apart from that of the ordinary courts that are constituted and organized to sit and hear causes that are justiciable. I think I need not dwell further upon that.

Mr. President, as to the definition of impeachable offenses, as Rawle said, it is difficult to define what they are. The fact is that many provisions of the Constitution are incapable of an advanced, comprehensive, or satisfactory definition to meet every case that may possibly arise. The mistake that these gentlemen representing the respondent make is that they confuse the question of jurisdiction with the question of definition. It is familiar to every Senator, whether he be a lawyer or layman, that the Constitution is an instrument of enumeration and not of definitions. So, when you come to the clause that gives you jurisdiction of this case, the impeachment case, you know from the history of the formation of our Government that such provision was inserted in order to clothe somebody under the Federal Government with the jurisdiction to remove civil officers. The fathers thought it not wise to give it to the President, for the King had it and had abused it. They thought it not wise to turn it over to the House of Representatives or the House and the Senate jointly. They looked with confidence to the far future, when possibly the country might be imperiled on account of the faithlessness of public officials, and they said the Senate, the representatives of the States, the States each choosing the Senators through the medium of their legislature or, as I hope it will be soon, through the medium exercised directly by the people, that this body, the Senate, could be intrusted with this power. Why? Because, in addition to what I have said, it was less likely to be abused here than elsewhere. Possibly a President might want to coerce the judiciary; possibly the House of Representatives might be inflamed in times of excitement; but this body, composed of men of long tenure, of trained minds, of experience in public affairs, could be intrusted with this extraordinary jurisdiction and power.

I will not undertake to frame a complete definition of all the causes to which impeachment applies. The Constitution has abstained from attempting such a definition. The causes for which a civil officer of the United States may be removed from office by impeachment were purposely made indefinite by the framers of the Constitution, just as under the Articles of War the causes for which an officer of the Army or Navy may be summarily removed from office by sentence of court-martial were purposely made indefinite.

An impeachable high crime or misdemeanor may be said to be a political offense by a civil officer of the United States which is prejudicial to the public interest. It may consist in any official misconduct or misbehavior, not necessarily committed under color of office, which in its natural consequences tends to destroy the confidence of the public in the official integrity or bring into disrepute the personal character of the offender.

I may be permitted to read from Guthrie's fourteenth amendment:

Such a constitution is an enumeration of general principles and powers or of limitations upon the exercise of governmental functions, and it is not a mere code of rules to regulate particular cases. All progress and improvement would be barred and a constitution would soon become useless if it were not construed as a declaration of general principles to be applied and adapted as new conditions presented themselves. * * * As Chief Justice Marshall said in the famous case of McCulloch *v.* Maryland: "A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves." And ex-President Harrison has well said in his interesting book on This Country of Ours: "To the lay mind it may seem puzzling and not a little discouraging that a century has not sufficed to interpret the Constitution; but the explanation is largely in the fact that constitutional provisions are general and not particular, and the court is required constantly to apply them to particulars and to new conditions."

Nor should the courts attempt to define with precision the scope of a constitutional provision, although this is constantly and necessarily done in construing statutes. A definition of the scope of a constitutional provision can not be necessary in any case. An exposition of the general meaning of the principle is all that should be attempted. The sole inquiry must be whether the particular case submitted for adjudication is or is not within the principle of the constitutional provision invoked or to be implied therefrom, for what is implied is as much a part of the instrument as what is expressed. The Supreme Court of the United States has repeatedly declared that it was wiser to ascertain the scope and application of the fourteenth amendment by the "gradual process of judicial inclusion and exclusion as the cases presented for decision shall require, with the reasoning on which such decisions may be founded."

And, Mr. President, may I say that the Supreme Court has never undertaken to define the meaning of "the equal protection of the laws"? The Supreme Court has never undertaken to give a comprehensive definition of "due process of law." It has pursued the process of construing that law in the light of the case that it has before it. And by no other process of reasoning, nor in any other way, can the fourteenth amendment, particularly these two provisions that I have mentioned, be defined or construed. Will any man here tell me that he can write the meaning of "due process of law" or of "the equal protection of the laws" applicable to every case? Let me invite you to look at the cases wherein the meaning of these terms has been under consideration and construed. And, Mr. President, from time to time new cases demand the further application and definition of these provisions. But I have not the time to dwell further upon that subject.

Now I come to another proposition. It is elementary to say that in construing an instrument, I care not whether it be a statute or whether it be a constitution—or I believe I may add that I care not whether it be a contract: You must look at the whole instrument, be it constitution or be it an act of a legislature, be it a contract or other written instrument.

That is laid down in Southerland, in Sedgwick, and stated by all the writers, and I shall quote from them, Mr. President, not for the purpose of enlightening this learned body upon so elementary a proposition, but merely for the sake of completing the harmony of my argument:

It is to be presumed that all the subsidiary provisions of an act harmonize with each other, and with the purpose of the law; if the act is intended to embrace several objects, that they do not conflict. Therefore it is an elementary rule of construction that all the parts of an act relating to the same subject should be considered together and not each by itself. By such a reading and consideration of a statute its object or general intent is sought for, and the consistent auxiliary effect of each individual part. Flexible language, which may be used in a restricted or extensive sense, will be construed to make it consistent with the purpose of the act and the intended modes of its operation, as indicated by such general intent, survey, and comparison—ex antecedentibus et consequentibus fit optima interpretatio. (Southerland on Statutory Construction, pp. 284, 285.)

239. The intention is to be ascertained by considering the entire statute. The practical inquiry is usually what a particular provision, clause, or word means. To answer it one must proceed as he would with any other composition—construe it with reference to the leading idea or purpose of the whole instrument. The whole and every part must be considered. The general intent should be kept in view in determining the scope and meaning of any part. This survey and comparison are necessary to ascertain the purpose of the act and to make all the parts harmonious. They are to be brought into accord if practicable, and thus, if possible, give a sensible and intelligible effect to each in furtherance of the general design. A statute should be so construed as a whole and its several parts as most reasonably to accomplish the legislative purpose. If practicable, effect must be given to all the language employed, and inconsistent expressions are to be harmonized to reach the real intent of the legislature. It is said to be the most natural exposition of a statute to construe one part by another, for that expresses the meaning of the makers; this expression is ex verceribus actus. The words and meaning of one part may lead to and furnish an explanation of the sense of another. "To discover," says Pollock, C. B., "the true construction of any particular clause of a statute the first thing to be attended to, no doubt, is the actual language of the clause itself, as introduced by the preamble; second, the words or expressions which obviously are by design omitted; third, the connection of the clause with other clauses in the same statute, and the conclusions which, on comparison with other clauses, may reasonably and obviously be drawn. * * * If the comparison of one clause with the rest of the statutes makes a certain proposition clear and undoubted, the act must be construed accordingly, and ought to be so construed as to make it a consistent whole. If, after all, it turns out that that can not be done, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail."

240. General intent of statute key to meaning of the parts.—The presumption is that the lawmaker has a definite purpose in every enactment and has adapted and formulated the subsidiary provisions in harmony with that purpose; that these are needful to accomplish it, and that, if they have the intended effect, they will at least conduce to effectuate it. That purpose is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms. This intention affords a key to the sense and scope of minor provisions. From this assumption proceeds the general rule that the cardinal purpose or intent of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious. They are to be brought into harmony, if possible, and so construed that no clause, sentence, or word shall be void, superfluous, or insignificant. But where a word in a statute would make the clause in which it occurs unintelligible, the word may be eliminated and the clause read without it. It would be mischievous to attempt to wrest such words from their proper and legal meaning merely because they are superfluous.

241. The intention of the whole act will control interpretation of the parts.—Words and clauses in different parts of a statute must be read in a sense which harmonizes with the subject matter and general purpose of the statute. No clearer statement has been, or can be, made of the law as to the dominating influence of the intention of a statute in the construction of all its parts than that which is found in Kent's Commentaries: "In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit the intention is to be collected from the context, from the occasion and necessity of the law, from the mischief felt, and the remedy in view, and the intention is to be taken or presumed according to what is consonant with reason and good discretion." If upon examination the general meaning and object of the statute be found inconsistent with the literal import of any particular clause or section, such clause or section must, if possible, be construed according to that purpose. But to warrant the change of the sense, according to the natural reading, to accommodate it to the broader or narrower import of the act, the intention of the legislature must be clear and manifest. The application of particular provisions is not to be extended beyond the general scope of a statute unless such extension is manifestly designed. Legislatures like courts must be considered as using expressions concerning the thing they have in hand; and it would not be a fair method of interpretation to apply their words to subjects not within their consideration, and which, if thought of, would have been more particularly and carefully disposed of. The mere literal construction ought not to prevail if it is opposed to the intention of the legislature apparent from the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effected the law requires that construction to be adopted. The intention of an act involves a consideration of its subject matter and the change in, or an addition to, the law which it proposes; hence the supreme importance of the rule that a statute should be construed with reference to its general purpose and aim. "Where the words," says Lush, J., "employed by the legislature do not directly apply to the particular case, we must consider the object of the act." (Southerland on Statutory Construction, pp. 317–321).

Every part of a statute must be viewed in connection with the whole, so as to make all its parts harmonize, if practicable, and give a sensible and intelligent effect to each. It is not presumed that the legislature intended any part of a statute to be without meaning. (Southerland on Statutory Construction, p. 412.)

Now, we have heard discussed the jurisdictional power of this body, the power to impeach. Mark you, Mr. President, the impeaching clause confers jurisdiction and power upon you. It contains the limitation that this power is confined to civil officers. The Constitution of the United States is an instrument of delegated powers, and I take it that even without the tenth amendment power not delegated to the Federal Government would not, under the theory of the federal scheme that the States entered into, have been conferred upon the Federal Government. This power here invoked was given to you—this jurisdiction, this process, if you please. Why is the process necessary? You can speak of removal from public office, or, in the language of the respondent's ingenious counsel, you can speak of the "recall." We have under the Constitution power of removal vested somewhere and applicable to the case of every official or functionary of the Federal Government.

The President is automatically "recalled," if you please, automatically removed every four years. You, Senators, are automatically "recalled" every six years. A Representative has to face a "recall" or a removal every two years. Every civil officer is removable by a time limit or is removable at the pleasure of the appointing power except one, and that one is the Federal judge, who can be removed by the judgment of the Senate only.

Oh, it is monstrous, say the counsel, to contemplate taking from his high position of violated trust this judge. Let us see the conditions upon which he acquired that trust. Here I invoke the doctrine that this provision of the Constitution must be construed in pari materia with the jurisdictional provision which has been so often referred to. Says the Constitution: "Judges * * * shall hold their offices during good behavior."

Mr. President, that was the contract. That is a corollary to the appointing power. That was the limitation. That was the protection promised to the people against abuse. Yet this cardinal canon of construction to which I have referred is to be ignored and the tenure conditioned upon good behavior is to be read out of the Constitution. Watson and Tucker and all of the other authorities say if you construe it as the counsel in this case construe it you render it a nullity.

Did our fathers write meaningless phrases into the organic law of our country? Did they not have a purpose—a well-considered purpose—when they put those words into that instrument? You can not get away from the proposition that in the case of a judge his tenure is limited to during good behavior. It carries with it the undoubted meaning and force that if he misbehaves himself he shall not longer hold that office.

In his work on the Constitution, Foster says (p. 586):

The Constitution provides that—

"The judges both of the Supreme and inferior courts shall hold their office during good behavior."

This necessarily implies that they may be removed in case of bad behavior. But no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

The Constitution provides that the judges shall hold their position during good behavior, and as an unavoidable corollary to this provision it must follow that misbehavior on the part of the judge will, when the jurisdiction and power of this tribunal is invoked, remove him on account of the forfeiture of title to his judicial office.

This provision in the Constitution is an admonition against misbehavior by a judge. Thus, when a judge commits acts constituting misbehavior within the meaning of this provision, he violates the positive law of the land. A statute of Congress has no force or effect unless it is passed in pursuance of the legislative powers granted to Congress by the Constitution. Therefore, if Congress should pass a statute making misbehavior or misconduct on the part of a Federal judge an indictable offense, the question which would confront the Senate would be precisely the same as the question which is presented in the case now before you for your determination.

Senators, your powers are derived from the Constitution just as the powers of the Supreme Court are derived from that instrument. It is not competent, it is not within the power of Congress by any enactment, to add to the jurisdiction or powers of this body or of the Supreme Court.

It may be that if an act of Congress should denounce certain things as constituting high crimes and misdemeanors the Senate would take it as a legislative interpretation of the Constitution. You might follow it and agree to it. But if you saw fit to say that the offenses denounced by such act of Congress do not constitute high crimes and misdemeanors as contemplated by the Constitution, what power can gainsay your rightful authority to so determine?

In the old case of Marbury v. Madison the Supreme Court held that you can not add to the jurisdiction of that tribunal,

because it was of a constitutional derivation. The same power that denies the enlargement denies the subtraction.

Now, Mr. President, it is not necessary that the offense be committed under the color of office. Suppose a judge were to commit highway robbery and be put in the penitentiary, would you hold that he could not be impeached upon the ground that it was not done in his judicial capacity? Would you say that he could go on and hold that office and administer justice in behalf of the people of the Federal Union from the walls of the penitentiary of some State? It is an absurdity.

I read from Black on the Constitution:

Treason and bribery are well-defined crime. But the phrase, "other high crimes and misdemeanors," is so very indefinite that practically it is not susceptible of exact definition or limitation, but the power of impeachment may be brought to bear on any offense against the Constitution or the laws which, in the judgment of the House, is deserving of punishment by this means or is of such a character as to render the party accused unfit to hold and exercise his office. It is, of course, primarily directed against official misconduct. Any gross malversation in office, whether or not it is a punishable offense at law, may be made the ground of an impeachment. But the power of impeachment is not restricted to political crimes alone. The Constitution provides that the party convicted upon impeachment shall still remain liable to trial and punishment according to law. From this it is to be inferred that the commission of any crime which is of a grave nature, though it may have nothing to do with the person's official position, except that it shows a character or motives inconsistent with the due administration of his office, would render him liable to impeachment. It will be perceived that the power to determine what crimes are impeachable rests very much with Congress. For the House, before preferring articles of impeachment, will decide whether the acts or conduct complained of constitute a "high crime or misdemeanor." And the Senate, in trying the case, will also have to consider the same question. If in the judgment of the Senate the offense charged is not impeachable, they will acquit; otherwise, upon sufficient proof and the concurrence of the necessary majority, they will convict. And in either case there is no other power which can review or reverse their decision. (2d ed., pp. 121–122.)

I now read from Mr. Tilden's Public Writings and Speeches:

Misconduct, wholly outside of the functions of an office, may be of such a nature as to exercise a reflected influence upon those functions and to disqualify and incapacitate an officer from usefully performing those functions. This is especially and peculiarly true of the judicial office. In such cases the misconduct constitutes an impeachable offense and is ground for removal. The words "high crimes and misdemeanors" are not limited to official acts. (P. 481.)

Now, the question of misbehavior, I take it, has been fully dealt with by my associates in their discussion of the case.

Mr. President, we come now to consider one thing in this case, to use the language of the street, that "bobs up serenely" in every criminal case. Every old criminal lawyer on earth raises it in every case, and in this high tribunal, when this man's acts are revealed to you in their nakedness, in their probative force, from which you can draw your own inference or conclusion, the "fog machine" is put to work on intent. But sensible men, as you, Senators, are, need not the voluntary aid of this accused man to tell you his intent. It was significant in the trial that one of the counsel read from an authority the concluding sentence of which was that such evidence given by a defendant is of little value. Indeed, it is of little value in this case.

Mr. President, there never was a criminal on earth who would not disclaim a bad intent; and yet shall they go unwhipped of justice? It is a peculiar characteristic of persons afflicted with paranoia that they think they are right.

I shall not be personal here, but a judge stands before you who is forced under cross-examination to admit that he engaged in a practice so reprehensible that no honorable judge was ever accused of the like before—brazenly admitted that he had done it, that he had sought the money, that he wanted it, and said on the witness stand here "what of it?"

Mr. President and Senators, that is one thing the matter today with the Federal judiciary, some of them. I am glad to say that I think, in point of integrity and fairness and ability, the Federal judiciary averages in every respect as high as the judiciary of any State. I pause long enough to pay that great branch of our Government this tribute, that nearly all of them are honest, highminded, faithful ministers of public justice.

I read from One hundred and sixty-fifth United States, page 53, the case of Agnew *v.* United States. It was claimed in this case that the trial court erred in giving the following instructions:

The law presumes that every man intends the legitimate consequence of his own acts. Wrongful acts knowingly or intentionally committed can neither be justified or excused on the ground of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act, which results in loss or injury, is proved to have been knowingly committed.

But Chief Justice Fuller said:

In our opinion there was evidence tending to establish a state of case justifying the giving of this instruction, which was unexceptionable as matter of law.

Now, I come to discuss briefly the question of character. It is not pleasant to me to have to animadvert upon the conduct of one of my brethren who belongs to the opposition in this discussion. He made much ado about nothing. Senators, shall I say that he took an unimportant matter and distorted it into something that it did not mean for the purpose of beguiling you into a belief that is not founded upon fact for the purpose, as a part of an argument, to mislead? I shall not say to deceive, for that is a harsh word. He adverted to the proceedings when Mr. Manager CLAYTON (who is now addressing you), in order to expedite this trial, said repeatedly it is not necessary to have a multitude of witnesses here to establish a good character or a good reputation in Scranton on the part of this man. We do not put that reputation in issue. We will offer no witnesses.

The Senate will recall that the manager said that this right to examine character witnesses had a limitation in every court in every State in the Union, either limited by the discretion of the judge, or limited by the rule of the court, or limited by statute, and I said that in the State of Illinois by a rule of the supreme court that had the force and effect of statute, it was limited to eight; and yet, forsooth, when I was trying to aid this body to bring this cause to a conclusion, on that little circumstance he builds up his assertion not warranted, saying, "Oh, this man's character, his integrity is unassailed and unassailable." Oh, puny argument! Oh, despicable suggestion! Oh, how inexecrable. Oh, oh, miserable pettifogging!

Mr. President, the character of this man or his reputation at Scranton is not what we are trying. We are trying him for misbehavior. Honorable counsel for the respondent referred to a case in Holy Writ, where Christ shielded the woman from being stoned. I do not know what application he meant to make of that; but I suppose that he meant to say that Christ forgave the sinning woman who had not a good reputation, and therefore by what he believes to be ineluctable logic you should forgive this sinful judge. Atoning grace is never extended except following contrite confession.

Mr. President, I may be pardoned for referring to another case in the Scriptures often referred to. The betrayer of our Savior, who gave that betraying kiss for the 30 pieces of silver, had a good reputation, and could have proved it by all the other Apostles and by the people who saw that body going about doing good; and yet, Mr. President, and still yet, he was guilty of betraying his Lord and Master, just as this man, clothed on account of his high reputation with power and responsibility, has prostituted that power and responsibility for the greed of gain!

Again, let me quote from the Book that the counsel for the respondent who first spoke seems to think a good authority here:

He that is greedy of gain troubleth his own house, but he that hateth gifts shall live.

And again:

Thou shalt take no gift, for the gift blindeth the wise and perverteth the words of the righteous.

That is what it would do to him. The reward that was to come to his henchmen is also dealt with, I think, in this same Book. They were to get money; these railroad officials were to have the favor of the judge; they were to be welcomed among the high and the mighty who sat in the judgment seat in the Commerce Court. "A man's gift maketh room for him and bringeth him before great men," namely, the judges of the Commerce Court of the United States.

Mr. President, the necessary effect of this judge's conduct, regardless of his intent, was repeated misbehaviors. It in nowise subtracts from the sum of his wrong conduct if his standard was as low as it seems to have been. We are not to judge him by that degraded view, but we are to pronounce judgment according to the better rule of the results, the consequences, and the effect of his conduct.

Mr. President, counsel has said that the judge did not write a letter to Brownell on Commerce Court paper.

Mr. WORTHINGTON. I said he did.

Mr. Manager CLAYTON. Then I misunderstood you.

Mr. WORTHINGTON. One of the managers said he did not, and I was correcting him and said that he did.

Mr. Manager CLAYTON. Very well. The counsel for the respondent, after contemptuous reference, waived aside as of no importance the fact that the judge used the official letterheads of the Commerce Court in his correspondence with the officials of corporations engaged in interstate commerce. Of course, the mere value of the paper falls under the doctrine of de minimis, but this correspondence on these official letterheads is a pertinent and important fact. In effect the counsel has said that it is common for public officials to use official paper in their correspondence. Of course, Mr. President, "there would be no impropriety in writing a note to a lady on such stationery," as counsel has said, but let me state an extreme case: It would be

highly improper for any public official to write a note on such paper to a bawd for the purpose of making a liaison. The evil in this case consisted in the persistent use of the letterheads of the court in correspondence with perfectly reputable gentlemen representing corporations having litigation or likely to have litigation in his court. There should not be a suggestion made by a judge in his business dealings that he has power or authority over those from whom he seeks to obtain a contract of benefit to himself. And this is true whether or not such conduct influenced reputable gentlemen. The judge sought to do so.

The same counsel has said that the judge made no effort to conceal his identity or his connection with these culm dumps. He drew two of the options for the purchase of culm dumps or coal properties, and in neither one of those options in which he was to share, according to the testimony, is his name disclosed as a party in interest, and in all, or nearly all—I am sure that is accurate—he did disclose his name when he wanted that disclosure to have effect upon the railroads or upon their officials.

Oh, it is said that the judge has not been guilty of bribery or a statutable offense. Possibly not. Bribery, like highway robbery, is a brutal and vulgar offense. It is not an artistic performance. Of course, when he was going to the railroad officials, either in Pennsylvania or in New York, when he made his repeated visits to the various cities of Pennsylvania—several of them—and to New York, he did not send those people word, "I must have money; I must be allowed to make an advantageous trade; and you must afford to me that privilege."

Oh, no, Mr. President; he did not say that. That would have been rough and brutal, and would have probably subjected him to an indictment under the bribery statute. He was too learned for that, too polished, too suave, too artful. If he had gone into the offices of one of those officials and said, "I demand, by virtue of my power and influence as a judge of a court which will deal with your corporation, that you give me a profitable trade," he doubtless would have been ordered out. He might have been thought insane. But he did not adopt that method. He wrote some 25 or 30 letters to those officials—and they are here in evidence—and in these 25 or 30 letters, in nearly every instance, he used the official paper with the heading of the Commerce Court printed on it. "Oh, but," he said on the stand, "I just dictated those letters, and it was a matter of indifference to me; I never thought about it; my stenographer selected the paper." But this letter to Brownell, as well as other letters in evidence, were not dictated to stenographers; they are in his own handwriting and were written under the same letterheads.

His method was this: To send a sweet note making an engagement, soft in its terms, free from the positive assertion that "I want money" or "I want to force you to give me an advantageous trade." No; those letters amounted to a messenger in each case saying to those officials in honeyed accents, "The judge says you ought to be good enough to accord him the opportunity to make some money out of trading with your company"; and he follows his messenger into the offices of those people in Pennsylvania and in New York. Instead of a verbal demand we can imagine we hear him say softly, "Good morning, my dear sir," and we imagine that they might have replied, "Good morning, Judge; you are a judge of the Commerce Court. We have cases before you." And the judge might have answered, "Yes; you have cases before me for adjudication, but we will not talk about that. What I have come for is for you to give me an advantageous trade. You denied the opportunity to Williams; you denied those trades to all the others of the common herd in Scranton—give them to me." Why? He was judge, and he sought in this way to commercialize his potentiality as a judge. I do not say, Mr. President, that such a conversation occurred, but the judge put himself in the compromising position which may suggest the possibility of the thought.

Is that bad behavior in office? For that or other conduct like it in one isolated case you might give him the benefit of the doubt, but there are five coal transactions in the record. That is the system to which Mr. Manager STERLING referred. Five transactions in regard to coal dumps or fills for which he sought to acquire contracts that he might make money out of corporations engaged in interstate commerce. That is the system. One incident follows right along after the other, and now I will state a significant fact, Senators, or several significant facts. I want to call your attention to them. These facts are pregnant, persuasive, and conclusive that the judge misbehaved himself:

First. Judge Archbald undertook to acquire the five coal properties or to deal with the five coal properties after he became judge of the Commerce Court, and not before. The railroads were engaged in interstate commerce. He held the rights of those railroads in one side of the scale and the rights of the shippers in the other. He had potentiality; and after he acquired that potentiality he became afflicted with the itching palm—"the love of money, the root of all evil," according to the Blessed Book. This overshadowed and swept away all desire to preserve unsullied his judicial integrity and name. Then his official salary of $9,000 per annum was regarded by him as insufficient for his comfortable maintenance.

Second. Judge Archbald had never attempted to acquire coal property before he became a judge of the Commerce Court.

Third. In no case did any of the deals involve the expenditure of so much as a cent of money by the judge.

Fourth. His sole contribution in each case was his personal service. There were lawyers and lawyers in Scranton; there were business men there who could draw an option; they had but to copy them. There were lawyers and lawyers there who could have advised them. What was his service? Influence as a judge? With whom? With the people engaged in interstate commerce who controlled these coal properties. Answer that pregnant fact, if you can.

Fifth. In each case his services were first invited by some third person, some "go-between," who requested him to take up the matter with the railroad or some of its subordinate officials or some of its ancillary corporations. Oh, the door of his office was open, says the counsel. Yes; so open, so notoriously so that the John Henry Joneses, the Thomas Starr Joneses, the E. J. Williamses, and men of like standing and irresponsibility had a welcome access to it. And Watson had his willing ear. So anxious was he to help Watson to settle a case which was likely to come before his court that he telegraphed him and went to meet him down at the Raleigh Hotel on a cold day. Take all that. He was easy, because they knew his desire to make gainful bargains with litigants or probable litigants before his court.

Mr. President, I shall here state the facts regarding the Lighterage case, which has been prominently mentioned in testimony throughout this case. This case was a proceeding originally brought before the Interstate Commerce Commission by the Federal Sugar Refining Co. against the Baltimore & Ohio Railroad and other railroads, including the Delaware, Lackawanna & Western, the Erie, and the Lehigh Valley, for the purpose of securing relief from discriminatory lighterage charges in New York Harbor. It will be remembered by the Senators that Judge Archbald negotiated with the officers of the Erie Railroad for the purchase of the Katydid culm dump, as charged in article No. 1; that he negotiated with the officers of the Delaware, Lackawanna & Western Railroad for settlement of a case brought by the Marian Coal Co. against that railroad before the Interstate Commerce Commission; and that Judge Archbald negotiated with the Lehigh Valley Railroad for the purpose of securing an operating lease on the culm dump known as Packer No. 3, charged in article 3. The Interstate Commerce Commission granted an order in favor of the complainant on December 5, 1910. The railroads took the case to the Commerce Court, by petition filed on April 12, 1911 (Commerce Court docket No. 38), and a preliminary injunction, temporarily suspending the operation of the order of the commission, was granted by the court on May 22, 1911, without an opinion. In June, 1911, the United States, the Interstate Commerce Commission, and the Federal Sugar Refining Co. noted an appeal to the Supreme Court. The Supreme Court passed on the action of the Commerce Court in granting this preliminary injunction, on June 10, 1912. The Supreme Court ruled that the Commerce Court had power to issue the temporary injunction and remanded the case to that court for adjudication on the merits. The minutes of the proceedings of the Commerce Court on October 2, 1911, which appear in the testimony of Mr. A. F. Gallagher, page 333 of the record, shows conclusively that Judge Archbald considered that this case was pending in the Commerce Court for adjudication on the merits at that time. From this stenographic report it appears that the counsel for the United States objected to the taking of the testimony in that case until the Supreme Court should pass upon the appeal from the temporary injunction. But in answer to this objection Judge Archbald asked from the bench the following significant question: "If they want to hear all of the case, how can you deny it?" This shows conclusively that Judge Archbald regarded this case as still before his court on the merits.

These statements also apply to the so-called restricted fuel rate case (Commerce Court docket No. 39), to which these railroads were parties in interest.

Now, I want to come to a more particular discussion of some of the other articles. Of course, I regret that I have not the time to take up these articles seriatim and discuss them at length, but even in that situation I count myself happy, because my associates have demonstrated, I think, that we have sustained these articles, and I think that their arguments have not been answered. Furthermore, I am happy in the belief that the

Senate has or will read the excellent presentation of this case as made by my associates.

Necessarily, I will have to deal with only a few of the suggestions made in the argument by the counsel for the respondent.

Mr. Worthington says the letter by May to Williams saying he would recommend the sale of the Katydid was all that ever happened. As a fact, it was merely the beginning. The railroad did not follow May's recommendation until Archbald had gone to New York and had seen Brownell and Richardson. Counsel for the respondent can not get away from the ugly fact that Vice President Richardson, of the Erie Railroad, was opposed to the sale of this Katydid dump until Judge Archbald came to see himself and Brownell.

After this visit Mr. Richardson changed his decision regarding the matter, and directed May to grant the option. The testimony of both May and Richardson shows this conclusively. Capt. May did not fix any price on the dump until after Archbald's visit to Richardson.

Counsel for the respondent said that the Katydid culm dump was a worthless dump. Mr. President, let us see. The testimony of Mr. Rittenhouse, the civil engineer, is here. It shows that it was a most valuable culm dump. That examination and that report were made by him without knowing for what particular purpose they were made and without knowing that he would ever be called here as a witness. It is a true and impartial report, as I believe, and when I say I believe, I recur to a criticism that the counsel for the respondent made upon one of the managers. The House of Representatives is here now before you, theoretically, telling you what the House believes. In the ancient days the House actually attended these sessions. Now the managers come here as the House. And would it not be strange that the House could not tell this body that it believes in what that House did under sanctity of oath when they voted the articles of impeachment?

A worthless culm dump! It was valuable. But, Mr. President, I am not going to discuss that. Let us see. Judge Archbald then finds himself in the attitude of acquiring without paying one cent a worthless coal dump! Then he attempted to sell it for a large profit!

The last time the amount asked by him was $25,000. Subtract from that about $8,000, the amount that he was to pay, and the balance represented is profit. I think, Mr. President, it would be a better defense if they were to admit that it was valuable rather than to say it was worthless and that this high-minded judge was trying to put off worthless property upon people for a large sum of money.

Mr. WORTHINGTON. Would you mind telling the Senate to whom he sold it for $25,000?

Mr. Manager CLAYTON. I say he made the contract—the option. I refer to the letter of September 20, 1911:

> MY DEAR MR. CONN: This will introduce Mr. Edward Williams, who is interested with me in the culm dump about which I spoke to you the other day. We have options on it both from the Hillside Coal Co. and from Mr. Robertson, representing Robertson & Law, these options covering the whole interest in the dump.

This letter shows that he considered that he was getting a clear title to this dump through the options from May and Robertson.

There were several of these options where the property was to be sold one time to this concern; another time, I believe, to Thomas Star Jones's concern. These options were drawn by Judge Archbald, and he omitted his name from each of them.

Mr. President, I pass now to another error committed by the counsel. The Hillside Coal & Iron Co. refused to buy Mr. Robertson's interest in the Katydid culm dump because they denied that Robertson had any interest in it by reason of his abandonment of the operation for a period of over three years. The Du Pont Powder Co. gave up the idea of buying the Katydid dump because they decided to buy their power from a power company. The transaction occurred a number of years ago when the culm was not nearly so valuable as it is to-day.

Again, Mr. Manager STERLING simply moved to strike out the testimony of one of the witnesses for the respondent. That is my answer to what he said about Judge STERLING's effort to exclude the Rittenhouse report. On the contrary, Mr. President, you will bear in mind that we had his report, and when his report was omitted from the printed record by the reporter the manager who is now addressing you came before the Senate the next day, or as soon as he could, and had it printed as a part of the proceedings.

This illustrates many of the errors, inaccuracies, and unintentional, I think, misstatements indulged in by counsel.

The lease to Robertson was a colliery operating lease on a royalty basis made many years ago—a very different proposition from an outright sale of a culm dump.

Respondent's counsel stated that the plat made by Merriman, on which May made his estimate when he fixed the price at $4,500, showed 55,000 gross tons of material of all kinds. This is so utterly unwarranted that I feel that I should not let it go unchallenged. May testified that he figured on a basis of 80,000 tons of gross material (see record, p. 987); but to show how entirely worthless is all of counsel's argument as to the value of the Katydid, he insists that the map made by Merriman showed 55,000 gross tons of material. The map plainly shows 55,000 gross tons of coal. Here is the map. It speaks for itself. Look at the footnote made by the engineer. The map appears on page 987 of these proceedings. I hope every Senator will turn to it and interpret it for himself. At the bottom of the map is this notation:

> Estimate 55,000 gross tons (available), exclusive of slush, rock, dirt, etc., of no value.
> As per Mr. Johnson, inspector.

That is a map that counsel said showed only 55,000 gross tons of material. It shows by its footnote that this engineer reported 55,000 tons of coal and not of slush, rock, and the like, and coal combined.

Mr. President, the counsel animadverted upon the witness Williams. They may say what they please about him—Edward J. Williams—he was the associate, the business partner, the intimate friend of Judge Archbald, made Judge Archbald's office his headquarters, where he spent much of his time. Counsel further say that May always wanted to sell the Katydid culm dump. Mr. Williams reported to the judge that May treated him gruffly; that he could not trade with him. He had to get the judge, referring to the statement of Mr. Manager STERLING, which is correct, to "intercede" with Mr. May, and to intercede with the higher railroad officials, in order to have May to make that trade. And Judge Archbald did intercede with them, as the testimony abundantly shows.

But something was said in argument to the effect that the judge did not say he was to have a half interest. Why, Mr. President, the judge admitted all along through this testimony that he was to have a part of the profit out of these properties. I can not stop now to cite the testimony, but the Senate will bear it in mind that he admitted it, and in one instance he said, "Why not?"—admitted it and said "Why not?"

Another significant fact is that he did not become very busy to help Williams acquire a culm dump until Williams had made it certain that he was to have an interest in it.

Now, Mr. President, I want to revert further to this article 1. If the Senate will take article 1 and put in one column the charge in that article and put into a parallel column the admissions of the defendant, you will find that every charge embraced in that article is admitted except on the question of intent. He denies that he undertook to influence the officers of said company except as he has admitted that in the agreement to sell the Katydid culm dump. He denied that he willfully or unlawfully or corruptly or otherwise took any advantage of his official position as judge to effect that contract. But he does admit all the other allegations; that he responded to the suggestion of Williams, and solicited by conference and letter May, the manager of the Hillside Co., to put a price on the Katydid. He admits that, failing to get the price from May, respondent in August, 1911, while in New York, applied to George F. Brownell, general counsel of the Erie Railroad Co., for information concerning the proposed sale. He admits that Brownell informed respondent that Richardson was the proper officer of the company to approach in the matter, and introduced the respondent to Richardson, and respondent said to Richardson he was there simply for the purpose of getting an early answer, one way or another, to the request for the sale of the Katydid. He admits that Richardson informed the respondent that he would communicate with May; and on August 29, 1911, when respondent casually met May in the streets of Scranton, he was informed by him that the Hillside Coal Co. had decided to sell its interest, and was requested by May to tell Williams to call on May. He admits that respondent notified Williams of this conversation, and that on the next day May advised Williams that the Hillside Coal Co. would sell the dump for $4,500. He admits that during the whole period of these negotiations and transactions the respondent was a judge as charged in the article; that the Erie Railroad Co. was a party litigant in the suits mentioned in the article; and that divers proceedings were pending in the Commerce Court, and divers actions taken by that court in those cases.

I have mentioned his denial of the charges which goes simply to the question of intent. We submit the substantial facts, the substantial admissions, and ask the Senate to judge of him rather than by his denial and by his disclaimer of wrongful intent made here upon the witness stand.

Oh, but they undertake to try the Bolands and to say that the judge was trapped in this matter. Mr. President, that is a sickly defense. The idea of a judge of a great court of the United States being innocently trapped into this sort of a transaction by Boland and by Williams—by Boland, whose mentality the counsel reflects upon, and by Williams, for whose lack of mental acumen he apologizes.

I read, Mr. President, from the case of Grimm v. The United States (156 U. S., 610), where Mr. Justice Brewer said:

> It does not appear that it was the purpose of the post-office inspector to induce or solicit the commission of a crime, but it was to ascertain whether the defendant was engaged in an unlawful business. The mere facts that the letters were written under an assumed name and that he was a Government official—a detective he may be called—do not of themselves constitute a defense to the crime actually committed. The official, suspecting that the defendant was engaged in a business offensive to good morals, sought information directly from him, and the defendant, responding thereto, violated a law of the United States by using the mails to convey such information, and he can not plead in defense that he would not have violated the law if inquiry had not been made of him by such Government official. The authorities in support of this proposition are many and well considered.

May I inquire, Mr. President, how many minutes I have remaining?

The PRESIDENT pro tempore. The Chair is informed that half an hour of time is remaining to the manager.

Mr. Manager CLAYTON. Now, Mr. President, I shall not have time to further answer the ingenious devices and suggestions resorted to by the counsel for the respondent concerning article No. 1. I shall therefore refer you to what my associate managers have said in the preceding arguments, and I do it with confidence, for their reasoning was illuminating and their logic was irresistible.

Now I revert to the second count, the Marian Coal Co. I desire to answer certain arguments and statements made by counsel for the respondent in regard to article 2, which is commonly referred to as the Marian Coal Co.'s case.

Mr. Simpson said in his zeal on behalf of his client on yesterday that Christy Boland, one of the witnesses introduced on behalf of the managers, had testified to an untruth in giving his testimony before Mr. Wrisley Brown. Mr. President, there is no evidence to sustain such a statement, and I am sorry that the counsel who made that criticism used harsh and unparliamentary language in denouncing Mr. Christy Boland, who was Judge Archbald's "Dear Christy."

But it must be excused somewhat upon the fact, I suppose, that our friend Simpson is of a highly nervous organization, and sometimes that nature forces an unparliamentary explosion.

Mr. Brown met Mr. C. G. Boland, sometimes called "Christy," and had a conversation with him, in which he asked Boland certain questions, and to which Boland made reply. Brown's stenographer was present and took notes of what was said. When the statement of the conversation was written out it was submitted to C. G. Boland and he was asked to sign it and swear to it. This he positively refused to do. It is in the printed copy of the stenographer's transcribed notes in which the matter referred to is found, and is as follows:

> Mr. BROWN. Did Watson give you any intimation of what was to become of this large excess over the $100,000?
> C. G. BOLAND. No.
> Mr. BROWN. You did not concern yourself about it?
> C. G. BOLAND. No.
>
> (Page 720, Senate Record.)

Mr. Boland finally agreed to give Brown a statement, which he prepared himself, and in that statement he cut out all reference to the questions and answers referred to which appear in the stenographer's notes. Mr. Boland's full explanation of this whole matter appears on pages 723 and 724 of the hearings before the Senate.

Counsel for respondent on yesterday, if I understood him correctly, admitted that if Judge Archbald used his influence to aid Mr. Watson in securing a $5,000 fee, and did it corruptly, he would be guilty of the charge made against him in this article, although he might not himself share in the fee. I think the learned counsel has done himself credit to make such admission, for I hardly think that a position to the contrary could be successfully maintained before this high Court of Impeachment.

What are the facts? Edward J. Williams, an associate of the judge in the Katydid transaction, went to C. G. Boland and told Mr. Boland that he believed that George M. Watson, an attorney of Scranton, was in position to settle the controversy of the Marian Coal Co. with the Lackawanna Railroad Co. Mr. Boland called upon Mr. Watson and they finally reached an agreement whereby Mr. Watson was employed to make an effort to effect the settlement. It was agreed that the Bolands would sell their two-thirds of the stock of the Marian Coal Co. for a lump sum of $100,000, and that if Mr. Watson could secure a settlement upon that basis he would be paid a fee of $5,000.

According to the testimony of C. G. Boland, a day or two after that agreement was entered into with Watson, he was called over the telephone to come to Judge Archbald's office. In response to the telephone call, he went to Judge Archbald's office and found Judge Archbald and Mr. Watson there. He states that Judge Archbald stated over to him that he understood that they were to sell their entire interest in the property for $100,000 and had agreed to pay Watson a $5,000 fee if he could bring about a settlement on that basis. He further testifies that in the same conversation, that Mr. Watson told him in Judge Archbald's presence that the judge had agreed to help him in securing the settlement, and that the judge assented to the proposition and stated that he would be glad to do all he could to assist Mr. Watson in effecting a settlement. He further testifies that in the same conversation a suggestion was made either by Judge Archbald or Mr. Watson that there ought to be some kind of a writing to guarantee that Mr. Watson would get the $5,000 in the event he was successful in the matter. Mr. Boland further testified that as a result of that suggestion, he went immediately to his brother, W. P. Boland, president of the Marian Coal Co., and procured a written statement, which is in the evidence, stating that in the event that Mr. Watson succeeded in bringing about a satisfactory settlement between the Marian Coal Co. and the Delaware, Lackawanna & Western Railroad Co., that he would be paid a fee of $5,000 for his services. This is the testimony of Mr. C. G. Boland. While this conversation is not admitted it is not positively denied either by Mr. Watson or Judge Archbald in their testimony. The judge says he doesn't remember any such conversation when he, Watson, and Boland were together, but as I remember his testimony he does not positively deny the substantial facts testified to by Christopher G. Boland. The effect of Watson's testimony upon the same point is precisely similar to that of the judge. He does not remember the conversation detailed by Mr. Boland. Judge Archbald in his testimony does admit, however, that he understood that Watson was to be paid a fee of $5,000 for his services in effecting a settlement of the controversy between the Marian Coal Co. and the Delaware, Lackawanna & Western Railroad Co., and he admits and pleads in his answer that he did agree to assist Watson in his efforts to bring about that settlement through friendship for Watson and through friendship for Christopher G. Boland. The testimony shows that he did aid and assist, and did attempt to aid and assist, Mr. Watson to effect that settlement by personal interviews and conferences with railroad officials, by writing letters and by counseling with Watson with regard to the settlement.

The testimony shows that although the price that the Marian Coal Co. was to receive was fixed in the agreement at $100,000, it is further shown by the testimony and is admitted by Judge Archbald that he knew that the proposition which Mr. Watson proposed to submit to the railroad company was $161,000. The testimony does not disclose any satisfactory or reasonable excuse why the consideration was raised from $100,000 to $161,000; it is not shown by any testimony in the whole case that the Bolands ever expected at any stage of the proceedings to receive any amount in excess of $100,000 if the settlement was made. Out of this $100,000 the $5,000 fee was to be paid under the agreement, so that the net amount that the Bolands would receive on settlement was $95,000. There is no testimony in the case to show that Watson or the Bolands had any agreement with John W. Peale during any stage of these negotiations that the suit which was pending against the Marian Coal Co., in which he was plaintiff, was to be taken care of in that settlement. So the evidence offered in support of this article of impeachment shows conclusively, under our view of the case, that this United States circuit judge, this judge of the Commerce Court, did undertake, not only to aid and assist Watson, his friend, in securing the $5,000 fee, but undertook to aid and assist Watson in wrongfully demanding from the railroad company $61,000 in excess of the amount which his clients had agreed to take on settlement. If such conduct does not show that Judge Archbald acted corruptly, it is difficult for the managers to conceive what amount of testimony will be required to show corruption on the part of a judge.

In article No. 5 Judge Archbald is charged with receiving from one Frederick Warnke & Co., which company is known as the Premier Coal Co., a $500 note in consideration of favors shown by Judge Archbald to Frederick Warnke for services rendered by the judge in Warnke's behalf. Why do I say for "services rendered by Judge Archbald"? Because in respondent's answer to a charge contained in article 13, that the judge

invested no money or other thing of value in any of the properties in which he acquired interests or sought to acquire interests, he makes this admission. I quote:

Respondent further admits that in the very few cases in which he was interested in the proposed purchase of culm banks or other coal property from railroad companies he did not invest any money or other thing of value except his own personal services in consideration of any interest acquired or sought to be acquired.

In view of this admission and the testimony in the case, I care not whether you call this $510 note a gift, fee, reward, or commission. The managers insist that the note was given in consideration of improper services rendered by Judge Archbald in behalf of Frederick Warnke, and this contention is abundantly established by the testimony. It is absurd to contend that it was due Judge Archbald for making a sale of the old Gravity fill, for the judge did not make that sale. It is equally absurd to contend that he was entitled to receive it as a commission by reason of the fact that he had an option on the property, for the evidence shows that he did not at the time of the sale hold any option thereon and had not for months previous to the consummation of the deal.

The sale was made by John W. Berry, agent of Lacoe & Shiffer, directly to the purchasers, and neither Judge Archbald nor John Henry Jones had anything to do with closing the deal. The facts shown by the testimony in regard to this transaction are as follows: Frederick Warnke owned a mining operation at Lorberry, which was held under a lease from the Philadelphia & Reading Coal Co., a subsidiary of the Philadelphia & Reading Railroad Co. W. J. Richards was vice president of both the coal company and the railroad company; George F. Baer was president of both companies. Mr. Warnke had purchased a two-thirds interest in this lease from one Baird Snyder under an agreement that the Philadelphia & Reading Coal Co. would furnish an assignment of the lease to Warnke. Mr. Warnke took possession of the property, made considerable improvements thereon preparatory to operating the same, and then called upon the coal company for the mining maps pertaining to the same, whereupon he was notified by the company that the lease under which he claimed title had been forfeited two years previously, and the coal company refused to recognize his rights in the premises. Mr. Warnke then made repeated efforts in person by conferences with Mr. Richards and President Baer to get them to reconsider their action and allow him to operate the property under a lease, which they refused to do. Then he endeavored to get them to allow him a lease on another property owned by the Philadelphia & Reading Coal Co. known as the Lincoln dump, and this they also refused to do. He then made efforts, through his attorneys and other friends, to get these officials to reconsider their action, but they persistently refused to do so. Finally he appealed to Judge Archbald and asked the judge to intercede for him with Richards, the vice president of the coal company. The judge agreed to do so and made an arrangement with Mr. Richards for an interview with him at Wilkes-Barre, which is 80 miles distant from Scranton.

Judge Archbald called on Richards at Wilkes-Barre in Warnke's behalf, but failed to get Mr. Richards to reconsider his action in regard to the lease at Lorberry or to give Mr. Warnke a lease on the Lincoln culm dump. Shortly after this occurred Mr. Warnke was employed by a brewing company to examine a property known as the old gravity fill, which they were considering purchasing from Judge Archbald and John Henry Jones, who, as already stated, at one time had an option on the property. The brewing company decided not to purchase the property and Warnke decided to consider the question of purchasing it for himself and went to John Henry Jones to inquire about the title. John Henry Jones referred him to Judge Archbald, telling him that Judge Archbald knew all about the title. Warnke then called upon Judge Archbald in the Federal building and the following occurred, as shown on page 738 of the proceedings. Warnke testified:

So I asked the judge about the title and he said he could not be my attorney. I says, "I understand you know something about these right of ways that went through this property—this Lacoe & Shiffer property." He said he did. I says, "All I want is your opinion whether you think the title is right or wrong." He told me the title as far as he knew, and he went on to explain the right of ways, and how the Pennsylvania came in possession of it, and told me then how it was dated back to Lacoe & Shiffer. I told him then that I was thinking of purchasing the property. Q. You were then asked what month or year, and you stated it was sometime in December and proceeded. Yes. So I told the judge that his information to me, as far as the title was concerned, was just as good for me as to get an attorney, and I would compensate him for it, and he says, "No; you need not do that at all." I says, "I really consider it worth to me just as much as an attorney's fee, and I would like to have you accept it from me if I purchase the property."

This testimony was given by Mr. Warnke before the Judiciary Committee, and was read to the witness when he appeared before the Senate in this trial, and after it was read the following questions were propounded to him:

Q. (By Manager DAVIS.) Is that your statement of the interview?
The WITNESS. Yes, sir.
Q. Is that correct?—A. Yes, sir.

This is all the evidence in the case pertaining to any kind of service rendered by Judge Archbald to Frederick Warnke or to any member of the company in consideration for which he demanded and received the $500 note referred to.

The facts, briefly stated, concerning the transaction which Judge Archbald had with W. W. Rissinger are these: Rissinger was the chief owner of the old Plymouth Coal Co. In 1908 he sued a number of insurance companies for a fire loss which occurred in his coal properties. Some of these cases were transferred from the State court to the United States court at Scranton, over which Judge Archbald presided on October 3. They came on for trial early in November. After the plaintiff had offered his evidence the defendant insurance companies demurred to the evidence. Judge Archbald overruled the demurrer and held that the evidence which Rissinger had offered was sufficient to send the cases to the jury, thereupon the attorney for the defendant insurance companies proposed a settlement, and after some negotiations it was agreed that judgments for about $25,000 be entered payable in 15 days, which time expired about November 28.

After these suits had been commenced Rissinger began negotiations with Judge Archbald concerning an interest in the gold-mining scheme in Honduras. He had George Russell, the promoter of the scheme, come from New York and have a conference with the judge the latter part of September. Negotiations continued until the 28th day of November. On that date Rissinger made a note for $2,500 payable to Judge Archbald and to Mrs. Hutchinson, the mother-in-law of Rissinger. This note was indorsed by Judge Archbald and delivered to Rissinger.

After some inquiry on the part of the bank as to the financial standing of Mrs. Hutchinson the bank discounted the note, and judgment was immediately taken by confession against Rissinger and Mrs. Hutchinson, his mother-in-law, but not against Judge Archbald. It seems from the evidence that the bank was relying, or had agreed to rely, solely on Rissinger and Mrs. Hutchinson for payment, as is manifest by the fact that judgment was not taken against Archbald. The note was discounted about December 12, and some two months later 84 shares of stock were issued by the Scranton Gold Mining Co., which Rissinger had organized for the purpose of taking an interest in the Honduras gold mining scheme, for which he paid nothing. He never paid any part of the $2,500 note, and was never called upon to pay it. It was paid by Rissinger, together with interest. Rissinger testified that Judge Archbald gave no obligation of any kind to pay for this stock, and he was not expected to pay for it. So far as the testimony disclosed, it was purely a gift. The judge's explanation that he understood it to be collateral security for his liability on the note is controverted by all the facts and circumstances in the case. The note ran for four months, and this stock was issued and delivered about two months after the note was given. If Judge Archbald was liable at all on the note he was liable for $2,500. Even the face value of this stock amounted only to $1,680. The stock was not assigned to Judge Archbald. It was issued originally to him by the corporation.

Why this gift from Rissinger? It was on account of one of two things. Either it had relation to the suits which Rissinger had had before Judge Archbald or it was for the purpose of giving better standing to the gold-scheme enterprise in which Rissinger was interested, and to enable Rissinger thereby to use Archbald's name for the promotion of the scheme. In either view of the case Judge Archbald was culpable, and indicates plainly that he was willing to accept gifts which had relation to his official duties, or was willing to barter the things, which came to him by reason of being judge, for filthy lucre.

Now, Mr. President, I need not discuss the doctrine of reasonable doubt. I do not think it has any real application here. I think the facts are plain and palpable. I think they are in their nature susceptible of being understood, susceptible of being construed, and I think the Senate capable of drawing its own conclusion from the admitted and proven facts. Reasonable doubt is the refuge that is invoked in behalf of the petty criminal, but, Mr. President, I do not recall in all the cases of impeachment heretofore had before the Senate of the United States that witnesses have been called to put in issue the character of the respondent.

But whether that be correct or not, this is not a case dependent upon circumstancial evidence or of such doubt that his

reputation or character can save him from the inevitable result of his persistent and inexcusable course of conduct.

Mr. President, try this case by the standard of ethics promulgated by any bar association, by the standard of ethics announced by any judge, by the standard of ethics which obtains in respect to the conduct of any high-minded judge. I think I am authorized in saying that the counsel for the respondent filed a brief before the committee in the House in which they admitted improprieties and indiscretions, but claimed that they were only improprieties and indiscretions. It remained for them to come to the Senate to deny that those acts were improper and indiscreet. In effect the judge says, "Yes, I made the trades; yes, I took the money; what of it? I am in office for life; you can not get me out." Senators, what of it? His conduct was improper. His course of conduct in repeated instances shows impeachable misbehavior, impeachable misdemeanors. Take the Century Dictionary and read the meaning of the phrase "during good behavior."

During good behavior: As long as one remains blameless in the discharge of one's duties or the conduct of one's life; as, an office held during good behavior.

In the case of State ex rel. Attorney General *v.* Lazarus (1 So. Rep., 376) Judge Poche said, in reference to those who framed the constitution of Louisiana:

They acted on the idea contained in the paternal recommendation of the first, the great chief justice of Louisiana, Judge Martin, when he said, "All those who minister in the temple of justice, from the highest to the lowest, should be above reproach and suspicion. None should serve at its altar whose conduct is at variance with his obligations."

Sharswood, in his work Professional Ethics, says this:

Counsel should ever remember how necessary it is for the dignified and honorable administration of justice, upon which the dignity and honor of their profession entirely depend, that the courts and the members of the courts should be regarded with respect by the suitors and people; that on all occasions of difficulty or danger to that department of government they should have the good opinion and confidence of the public on their side. Good men of all parties prefer to live in a country in which justice according to law is impartially administered. (P. 63.)

Another plain duty of counsel is to present everything in the cause to the court openly in the course of the public discharge of its duties. It is not often, indeed, that gentlemen of the bar so far forget themselves as to attempt to exert privately an influence upon the judge, to seek private interviews, or take occasional opportunities of accidental or social meetings to make ex parte statements or to endeavor to impress their views. They know that such conduct is wrong in itself and has a tendency to impair confidence in the administration of justice, which ought not only to be pure, but unsuspected. (Pp. 66, 67.)

I now read from the case of Leeson *v.* General Council of Medical Education and Registration (43 Chancery Div. Law Rep., 384, 385), where Lord Justice Bowen said:

As the lord justice has said, nothing can be clearer than the principle of law that a person who has a judicial duty to perform disqualifies himself for performing it if he has a pecuniary interest in the decision which he is about to give or a bias which renders him otherwise than an impartial judge. If he is an accuser, he must not be a judge. If he has a pecuniary interest in the success of the accusation, he must not be a judge. Where such a pecuniary interest exists, the law does not allow any further inquiry as to whether or not the mind was actually biased by the pecuniary interest. The fact is established from which the inference is drawn that he is interested in the decision, and he can not act as a judge. But it must be in all cases a question of substance and of fact whether one of the judges has in truth also been an accuser. The question which has to be answered by the tribunal which has to decide—the legal tribunal before which the controversy is waged—must be: Has the judge whose impartiality is impugned taken any part whatever in the prosecution, either by himself or by his agents? I think it is to be regretted that these two gentlemen, as soon as they found that the person who was accused was a person against whom a complaint was being alleged by the council of a society to which they subscribed and to which they in law belonged as members, did not at once retire from the council. I think it is to be regretted, because judges, like Cæsar's wife, should be above suspicion, and in the minds of strangers the position which they occupied upon the council was one which required explanation.

Mr. President, if it were becoming on this occasion, and if I were trained in the dramatic art, I could indulge in realism and I could picture to you this judge, sent hence unwhipped of justice, saying to the world, "I have done nothing wrong; the Senate has approved my course of conduct; my soiled garments have been washed, and the judicial ermine is restored in snowy whiteness to my shoulders." You could see him on the bench. But what, Mr. President, would the humble shipper engaged in interstate commerce think when he came to try his case before this judge and recalled his secret correspondence with and the secret arguments made by Helm Bruce, the railroad attorney, and remembered the obligations under which the railroads had put the judge? Ah, Mr. President, would that humble suitor for justice at his hands have confidence in him? Would he not think that justice would be denied to him by such a man? Let me say, any underground connection between corporations engaged in interstate commerce and Federal judges must not be tolerated or excused.

The counsel for the respondent made the Christmas bells ring; he heard the singing of the Christmas carols; he invoked love and forgiveness, those blessed attributes of our Savior, in behalf of his guilty client. But let us remember that while love and mercy are divine attributes, perhaps a higher attribute is justice. Let us remember that, long after the first Christmas carols had been sung and the Savior of mankind had reached maturity, endowed as He was with divine gifts and with the best that is in humanity as well, He had the attribute of justice; He had the impulse of righteous indignation. Wrong and outrage fired His soul, so that when He looked into the sacred temple and witnessed the profanation of that hallowed place, not love, not forgiveness, but justice was the high motive, the divine impulse that swelled in His combined nature of God and man and made him scourge from the temple the money changers who had desecrated its holy altars!

Mr. President and Senators, in behalf of the House of Representatives, I thank you for your courteous treatment of the managers; I thank you for this patient and impartial trial. I thank especially the Presiding Officer, who has so long, so patiently, and with such conspicuous fairness and ability guided these proceedings.

Mr. President, the case is now left with you and your associates in the confident belief that the people of the United States in their organic law have a remedy to expel from office a faithless judge. We confidently submit the case to the deliberation and high judgment of this Senate.

Mr. REED. Mr. President, I desire to send to the desk and have read a question which, however much it may appear on its face to be out of order, I want to ask the Senate to permit to be read to Judge Archbald for his answer. The question will show its own importance, I trust.

The PRESIDENT pro tempore. The Senator from Missouri sends to the desk a question which he asks permission of the Senate to have propounded to the respondent. Is there objection?

Mr. WORTHINGTON. Mr. President, as one of the counsel for Judge Archbald, before the question is asked, I want to say that we can not make objection to any question that is put by a Senator, provided it be understood after the answer is made that we shall have the right to address ourselves to the Senate as to the effect of the answer or its bearing upon the case.

Mr. REED. I ask now that the question be read to the Senate for its information, so that the Senate may understand the request.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Missouri?

Mr. LODGE. That the question be read?

The PRESIDENT pro tempore. The Senator from Missouri has really submitted two requests. One is that the question submitted by him shall be read, and the other is that it be propounded to the witness.

Mr. REED. My request now is that the question be read to the Senate in order that the Senate may determine whether it desires to have it propounded to the witness.

The PRESIDENT pro tempore. Is there objection to the reading of the question which the Senator from Missouri desires to have propounded to the respondent? The Chair hears none, and the Secretary will read the question.

The Secretary read as follows:

You have testified that you were in doubt with reference to the proper construction to be placed upon the testimony of Mr. Compton, and that thereupon you wrote a letter to Helm Bruce, the attorney, asking him for his construction of the evidence; and you have further stated that you attached the reply written by Helm Bruce to the record. It appears in the original record that in the sentence which appears in typewriting, "We did apply it there," an alteration is made by pen and ink, a caret being inserted between the words "did" and "apply," and a line is drawn from this caret to the margin and the word "not" written. Did you make this alteration?

Mr. REED. Mr. President, the purpose of the question is this: In the original record it appears that the text of the answer was actually changed, so that the record now to go before the Supreme Court goes with the word "not" written in it. I desire to know, and I think the Senate ought to know, whether Judge Archbald wrote that word "not" in that record. I ask that the question be propounded.

Mr. CRAWFORD. Mr. President, I simply desire to ask a question of the Senator from Missouri.

The PRESIDENT pro tempore. The Chair is obliged to say that the rules will not permit the Senator to do so.

Mr. CRAWFORD. Very well. I did not recollect that the testimony showed the condition which the Senator from Missouri states in his question.

Mr. WORTHINGTON. Mr. President, on behalf of Judge Archbald, I object to the question being put to him at this stage

of the proceedings, unless his counsel may have the opportunity, after the evidence is introduced, of making an argument upon the case as it may then be presented.

The PRESIDENT pro tempore. Is there objection to propounding the question?

Mr. CLARK of Wyoming. Mr. President, I move that the doors be closed for deliberation.

The motion was agreed to; and the Senate proceeded to deliberate with closed doors.

The managers on the part of the House of Representatives and the respondent and his counsel thereupon withdrew from the Chamber.

After 1 hour and 4 minutes the doors were reopened.

The respondent appeared with his counsel, Mr. Worthington, Mr. Simpson, Mr. Robert W. Archbald, jr., and Mr. Martin.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The PRESIDENT pro tempore. The Chair will state as to the question of the Senator from Missouri [Mr. REED], that the Senate in private conference determined that the question should not be asked.

Mr. REED. Mr. President, in order to save the Senate voting upon the question in public, simply to save the time of the Senate, I will withdraw the request.

Mr. CLARK of Wyoming. I move that the Senate sitting as a Court of Impeachment adjourn.

The PRESIDENT pro tempore. The Chair hopes the Senator will withhold the motion for a moment.

Mr. CLARK of Wyoming. Certainly.

The PRESIDENT pro tempore. The Chair thinks it is due, in order properly to keep the record, to announce that the junior Senator from Arkansas [Mr. HEISKELL] has not been sworn in in this proceeding; and the Chair calls the attention of the Senator from Mississippi [Mr. WILLIAMS] to that announcement.

Mr. WILLIAMS. Mr. President, I am authorized by the junior Senator from Arkansas to say that he has not been able to read the pleadings or the evidence; that he has come here so recently that he has heard none of the evidence and that he has heard only a part even of the argument; and that under those circumstances he does not consider that he would be quite a competent judge in deciding the grave issues that would be presented before him. He therefore asks to be excused from being sworn in as an impeachment judge.

The PRESIDENT pro tempore. Without objection, that direction will be given to it.

Mr. CLARK of Wyoming. I move that the Senate sitting as a Court of Impeachment adjourn.

The motion was agreed to.

Mr. GRONNA. I move that the Senate adjourn.

Mr. SMOOT. I hope the Senator will withhold the motion for a moment.

Mr. Manager CLAYTON. May I ask, Mr. President, whether the Senate sitting as a Court of Impeachment adjourns to a time set?

The PRESIDENT pro tempore. The Chair should have stated that the Senate sitting as a Court of Impeachment stands adjourned until 1 o'clock to-morrow. It would have resulted that way anyhow, because that is the regular order.

The managers on the part of the House, the respondent, and his counsel thereupon withdrew.

INTERSTATE SHIPMENT OF LIQUORS.

Mr. SMOOT. Mr. President, this morning unanimous consent was asked for agreement to vote on the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases at 3 o'clock on the 20th of January. I ask consent that that be resubmitted to the Senate.

Mr. GRONNA. I rise to a point of order.

Mr. WILLIAMS. A parliamentary inquiry. Does it require unanimous consent to vacate the previous unanimous consent?

The PRESIDENT pro tempore. It can not be done.

Mr. SMOOT. I ask that it be resubmitted.

Mr. LODGE. He asks that it be resubmitted.

Mr. WILLIAMS. Does the Senator request unanimous consent?

The PRESIDENT pro tempore. The Chair did not understand the Senator from Utah to make that request.

Mr. WILLIAMS. Then I make the point of order that a unanimous-consent agreement can not be repealed except by unanimous consent, and that the only proper request is a request for unanimous consent to reconsider what was done by unanimous consent. I do not know what are the rules of the Senate, but I do know, as a matter of common sense, that that which can be done by unanimous consent can be undone by unanimous consent, and that that which has been done by unanimous consent can not be undone in any other way.

The PRESIDENT pro tempore. The Chair recognized the Senator from North Dakota, and he made a motion to adjourn, and he has not withdrawn it.

Mr. KENYON. On that I ask for the yeas and nays.

The PRESIDENT pro tempore. The Senator from Iowa asks for the yeas and nays.

Mr. WILLIAMS. I ask a ruling, then, upon the point of order.

The PRESIDENT pro tempore. The motion to adjourn is pending.

Mr. WILLIAMS. I beg the Chair's pardon. I thought that had been disposed of.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from North Dakota that the Senate adjourn, on which the Senator from Iowa asks the yeas and nays.

The yeas and nays were not ordered.

The motion was not agreed to.

Mr. SMOOT. I now ask again that the question be resubmitted to the Senate for a unanimous-consent agreement setting a certain date to vote upon Senate bill 4043, upon the ground that when it was presented to the Senate this morning I was in the Chamber and did not hear it offered or read, but addressed the Chair for the purpose of objecting before any other business was transacted. I ask that it be resubmitted upon that ground.

Mr. SANDERS. I simply wish to say that this morning, without reflection, I requested that the question be resubmitted. But since then I have had time for consideration and am of the opinion that it is a question for the Chair to decide, and that what I said about reconsideration is of no effect whatever.

Mr. WILLIAMS. Mr. President, I make the point of order, and if the Chair will indulge me for a few moments I will say a few words on the point of order.

The point of order which I make is that the Senate having, by unanimous consent, adopted a certain course of procedure and the decision of the Senate having been announced to the Senate—— [A pause.]

The PRESIDENT pro tempore. The Chair is listening to the Senator from Mississippi.

Mr. WILLIAMS. The point of order which I make—— [A pause.]

The PRESIDENT pro tempore. The Chair is listening to the Senator.

Mr. WILLIAMS. But the Chair can not hear me when the Clerk is talking to him.

The point of order which I make is that unanimous consent having been once requested of the Senate, the request having been put to the Senate, the Senate having agreed to it, the temporary occupant of the chair having announced that the Senate had agreed to it, it becomes an order of the Senate by unanimous consent, and that there is no way by which the unanimous-consent order can be dispensed with except by a request for unanimous consent to reconsider or reverse the previous order.

Now, I understand that the gravamen of the argument upon the other side is this: That the Senator from Utah happened at the time to have his attention diverted to something else, and having his attention diverted he did not hear the request for unanimous consent; that as soon as he was informed of the nature of the request and of the action of the Senate and of the announcement of the Chair he arose for the purpose of saying that if his attention had been called to the request he would have objected, and then urging, as a matter of courtesy among Senators, that his objection should be taken nunc pro tunc.

Now, I admit that the main rule in the Senate is one of courtesy amongst Senators; but I submit that while the Senate owes Senators courtesy, Senators also owe the Senate courtesy. I suppose I am perhaps the most unfortunate man in this body to make this argument. I am more than half deaf, and very frequently things occur in the Senate, even when the Senate is in order, which I do not hear; but I do not think it would be in order for me—because that is my misfortune—to rise and ask the Senate, acting for 90,000,000 people, to reverse itself and to reverse its entire procedure because I had been unfortunate enough not to hear, whether the fact of my not hearing was due to the fact that I could not hear or because at the time I was doing something else, or was at the time outside the Senate Chamber.

I make the point of order, Mr. President, and I should like a ruling on it for the guidance of the Senate in the future. Perhaps, and for all I know, some ruling may have been made upon the same point in the past. I do know that at the other end of

the Capitol the request would not even be considered for one second; it would have been passed by upon the curt statement of the Chair that the House had already decided the question and that that announcement could not be reversed except by unanimous consent. A Member would be permitted to make request for unanimous consent to reconsider, and if that were objected to it would fall by the wayside. My only object in making the point of order is that we may have certain guidance for the future.

Mr. LODGE. Mr. President——

The PRESIDENT pro tempore. The Senator from Massachusetts——

Mr. WILLIAMS. I am not through. I was only waiting for the President to get through with the Clerk.

The PRESIDENT pro tempore. The Senator from Mississippi will proceed.

Mr. WILLIAMS. My only object, as I said, in making the point of order is that the Senate may have guidance for certain conduct in the future, so that we may know to a certainty by what rules we are guided.

As far as I am individually concerned, although I am in favor of the passage of the bill—not upon the ground for which gentlemen contend, but because I am absolutely a States-rights Democrat—in spite of all that, if the request for unanimous consent is made I shall not object. But I do make the point of order that a unanimous-consent agreement can not be vacated. [A pause.] I will take my seat, Mr. President.

The PRESIDENT pro tempore. The Chair hopes the Senator from Mississippi will proceed. The Chair has directed——

Mr. WILLIAMS. I notice that, and that is the reason I took my seat. I was about through, at any rate.

The PRESIDENT pro tempore. The Chair hopes the Senator will hear what the Chair was about to say. He had directed the Secretary not to interfere.

Mr. WILLIAMS. All I have to add is that if the question is put, and if I shall be listening and hear it, I shall not make objection to the request for unanimous consent, because I think there was a certain amount of misfortune about the matter; but I do want a decision of the occupant of the chair and the Senate upon the question whether a unanimous consent once granted by the Senate, deliberately, too, because it was deliberately granted, although the Senator from Utah happened not to hear it; the request was very deliberately made; and the then occupant of the chair, the Senator from Minnesota [Mr. CLAPP] very deliberately put the question—well, I beg the pardon of the Senator from Massachusetts [Mr. LODGE], but a mere shaking of his head will not destroy my impression. My question is whether, after that is done, a unanimous consent granted by the Senate, in open session, after an open request, after an open demand, and after a query by the Chair "Is there objection?" and after an open announcement that "The Chair hears none," can be vacated in any other possible way than by unanimous consent.

Mr. LODGE. Mr. President, I do not think a unanimous consent once made can be vacated by another unanimous consent, for there is no proof whatever that those who agreed to vacate were all present when the unanimous consent was given. Of those who were present when the unanimous consent was given, some may be absent, and it has always been held here that unanimous consent could not be vacated. This is not an attempt to vacate a unanimous consent. I was not present when this occurred this morning; I was in a conference and heard no part of it. I am speaking simply to the parliamentary question involved. This is not, as I understand, a question of vacating unanimous consent. It proceeds upon the proposition that no unanimous consent was ever properly given, that no unanimous consent ever existed.

Mr. WILLIAMS. Will the Senator submit to an interrogation?

Mr. LODGE. Certainly.

Mr. WILLIAMS. How, then, can the Senate give a unanimous consent except by some Senator requesting it, the Chair announcing the request to the Senate, and then waiting a due time and asking if there is objection, and then saying that the Chair hears none, and then announcing that the consent has been given? Is there any other way in which the Senate can give unanimous consent?

Mr. LODGE. Mr. President, it has occurred again and again in this Senate. I have heard it year after year. I have heard the occupant of the chair say, "Is there objection?" and hearing none, state that the order is made, and then some Senator, who has been trying to engage his attention, raises the point that he had not been observed.

I heard the late Vice President Sherman say more than once, "If that is the case, the Chair will resubmit the question." As I say, I am not speaking of the merits of what happened to-day, but the adequacy of this unanimous consent was called in question, as I understand, immediately after it was announced, that it had never been properly given, that the question was raised at once, and discussion was cut off only by the arrival of the hour of 1 o'clock.

Mr. WILLIAMS. If the Senator from Massachusetts will permit an interruption one second——

Mr. LODGE. I will.

Mr. WILLIAMS. I may be wrong, but I do not understand the facts to be as the Senator from Massachusetts states them. I understand the fact to be that in between the time when the occupant of the chair announced that he heard no objection and the time when he made the announcement that the order would be granted there was intervening business, I think, by the Senator from Minnesota. Now, if there is any doubt about that, I would like to have the record read.

Mr. LODGE. It was read this morning.

Mr. WILLIAMS. I heard it and I heard the stenographer read it later, and what he read was this: That at that time the Senator from Utah rose, and then he said that the Senator from Minnesota, or somewhere else—I do not remember where—rose, and the Chair recognized the other Senator and attended to the business which he had in hand, and then, after that, the Senator from Utah was recognized by the Chair.

Mr. LODGE. That is a question of recognition, and not of objection to it at once. The Senator from Utah, if I am correctly informed—I was not present—was on his feet asking recognition.

Mr. WILLIAMS. He may have intended to object, and did not. In other words, the Chair recognized——

Mr. LODGE. But, Mr. President, I have never before in my experience in the Senate, when the granting of a unanimous consent has been questioned, seen any attempt made to prevent a resubmission. There is no other way of getting at it.

But on the question of the point of order, I would call the attention of the Chair to the ruling made by Mr. Frye, which I remember. He said:

> The Chair can not rule on a question arising from a unanimous-consent agreement; it is for the Senators themselves to determine what it means.

It is not a matter of rule. It is a matter of unanimous consent and agreement.

Now, Mr. President, it seems to me it is too important a question to be decided at this late hour in a thin Senate. I should have made no objection to the unanimous consent; I should have assented to it very cheerfully, but I think it is of the utmost importance in the conduct of the business of the Senate that there should never be unanimous consent about which any Senator or Senators have any doubt as to its fairness or about the way in which it was obtained.

Mr. GRONNA. Mr. President, a parliamentary inquiry. I should like to know what question is before the Senate.

The PRESIDENT pro tempore. The Senator from Utah asked for a resubmission of the question as to whether or not there should be unanimous consent. The Senator from Mississippi raised a point of order upon that request to the effect that a unanimous consent once granted can not be set aside by another unanimous consent. The Chair understands that to be the point of the Senator, and that is the parliamentary situation.

Mr. SMOOT. I have not asked for unanimous consent.

Mr. GRONNA. Mr. President, I think the point of order is so well taken that I shall not attempt to make any further argument upon it. I believe, as the Senator from Mississippi has said, that this question can not now be resubmitted. Certainly the Senator from Utah can not ask for a reconsideration, for I do not believe that he could pretend that he voted for it; and no question can be open for a reconsideration except by a Senator who votes for the particular question.

Mr. LODGE. If the Senator will allow me one moment, you can not reconsider a unanimous-consent agreement, of course.

Mr. GRONNA. That is the point I make.

Mr. LODGE. No reconsideration is possible.

Mr. GRONNA. That is the point I was making. As to the procedure this morning, I had the floor when the Senate went into session as a court, and I attempted then to say that the request for this special order was considered deliberately. It was offered by the Senator from Tennessee; it was read by the Secretary; and the Chair propounded the question to the Senate, Is there objection? I was sitting in my seat and I paid particular attention to what was going on.

It is true, as the record shows, that the Senator from Utah rose in his seat after the announcement, but another Senator was recognized. The Senator from Oklahoma [Mr. OWEN] was

recognized, and other business was done before the Senator from Utah was recognized.

So I contend, Mr. President, that this question can not now be resubmitted.

The PRESIDENT pro tempore. On the question of order raised by the Senator from Mississippi [Mr. WILLIAMS], the Chair would state that if this were asking to set aside a recognized unanimous-consent agreement the Chair would undoubtedly hold that that could not be done; but the Chair does not understand that to be the question.

The present occupant of the chair was not occupying the chair when the incident occurred which is now the subject matter of discussion, and was not in the Chamber. The Chair is informed, however, that the motion to resubmit is based upon the contention that there was an immediate objection to it, and a statement that it was not heard.

The Chair thinks the Senator from Massachusetts [Mr. LODGE] has correctly stated the practice of the Senate; but it has been the practice of the Senate, certainly within the administration of the late Vice President, whenever a result was announced by him, and Senators would challenge the correctness of it, stating that they had not agreed to it and had not had the opportunity to interpose an objection, in a very great many cases the Vice President has promptly said that he would again submit the question.

That, the Chair understands, is the nature of the proposition which is now made by the Senator from Utah. It involves the question whether or not it has been finally submitted to the Senate and agreed to by unanimous consent.

The Chair would not undertake to decide that for the Senate, but he thinks it is entirely competent for the Senate to determine whether or not there has or has not been unanimous consent. Therefore the Chair will submit to the Senate for its determination the question whether there has or has not been unanimous consent, and he will submit it in the form of a motion for resubmission, which would involve the same question.

Mr. BRANDEGEE. Mr. President, in view of what the Senator from Massachusetts has said about the importance of the question which is now before us and the argument which he made as to why one unanimous consent should not be allowed to be set aside by another unanimous consent, to wit, that the same group of Senators who gave the unanimous consent might not be upon the floor when it was attempted to set it aside, it seems to me the same argument exists why a unanimous-consent agreement once granted should not be resubmitted after the expiration of such a long period of time as eight hours, and for the same reason—that the same Senators may not be on the floor now who were on the floor when the agreement was entered into.

Mr. LODGE. The Senator assumes that consent has been granted. The point of contention, as I understand it, is that it never was granted.

Mr. BRANDEGEE. I understand what the Senator means to claim upon that point.

Mr. LODGE. I do not claim it. I was not present, and know nothing of the fact.

Mr. BRANDEGEE. I assumed the Senator claimed it now.

Mr. LODGE. I do not claim anything; I do not know.

Mr. BRANDEGEE. Very well. I make this claim: That the record shows that the consent was granted, as read by the stenographer this morning from his notes; and the question is whether a consent having been granted it shall stand when certain Senators intended to object, but by excusable inadvertence perhaps were not allowed; that they attempted to address the Chair, but were not recognized for the purpose, as was the case of the Senator from Utah. Whatever may be the merits of submitting the question by the Chair at that time, when the same Senators were on the floor, it seems to me it may be a grave question whether it ought to be submitted, as I said, at a period eight hours subsequent to the granting of it.

Mr. SMOOT. I suggest that we adjourn until to-morrow morning.

Mr. BRANDEGEE. I say this irrespective of any opinion I may have on the bill. It is immaterial to me, as far as the pending bill is concerned, which way it is decided, but it is of great importance, I agree with the Senator from Massachusetts and the Senator from Mississippi, to have it decided, so that Senators may be able to rely upon a unanimous-consent agreement and have a uniform practice in relation to it.

Mr. GRONNA. Mr. President——

Mr. LODGE. In reply to the Senator from Connecticut——

Mr. GRONNA. I suggest the absence of a quorum.

Mr. LODGE. If there is one thing more important than any other in a unanimous-consent agreement, it is that Senators should feel that they must carry it out in the most rigid good faith, and it should be obtained with the utmost possible fairness. Otherwise you will have no unanimous-consent agreements. These do not exist under rules. There is not a rule in the world that relates to them. They are mere agreements among Senators, and the Chair, as I have read Senator Frye, refuses to rule upon them at all. It is very important, in my judgment, to maintain the character of a unanimous-consent agreement.

I know nothing about this case. I should have given my consent. I know nothing about this case except that it is disputed that it was ever fairly given, and I think that is a very serious matter.

Mr. SMITH of Georgia. Will the Senator yield for one question?

Mr. LODGE. Certainly.

Mr. SMITH of Georgia. Suppose a unanimous consent stands upon our calendar, where Senators feel that they had not given consent, is there any power in the Chair to enforce it? Can it not be disregarded by the Senate if Senators see fit to do so?

Mr. LODGE. Absolutely. I will read what Senator Frye said at the same time. The President pro tempore further said:

> The responsibility of violating the agreement must rest with the Senators themselves. The Chair has no power to enforce it.

Mr. STONE. I should like to make this suggestion to the Senator. A unanimous consent agreement is a question that rests in the honor of Senators.

Mr. LODGE. Precisely.

Mr. STONE. The order for it, when fairly made, ought not to be violated.

Mr. LODGE. Precisely.

Mr. STONE. When a unanimous consent has been asked for, and even where the Chair held that he hears no objection, and it has been entered in a formal way, and a Senator rises and makes the inquiry that was made by the Senator from Utah this morning, it has been the uniform practice of the Senate, as I understand and as I have observed over and over again during my service, for the Chair to say that the question will be again submitted. It seems to me that the practices of the Senate in that respect, so uniform and long continued, are entitled to as much respect and consideration in a matter of this kind as the unanimous consent itself.

Mr. LODGE. I agree. All I have been contending for is the character of the unanimous consent. In this particular one I have no objection or interest.

Mr. WILLIAMS. I should like to ask the Senator from Massachusetts a question, because I want to get it into my mind as to what my duty shall be in future. I want to do what is right in the Senate. I understand, now, if the Senate can set aside this officially announced unanimous-consent agreement—whether it be by unanimous consent or not, it has been so officially announced and appears in the RECORD—because a Senator was having his attention momentarily diverted, what would be the rule about a man who did not hear because he was still further incapacitated by deafness, and what would be the rule about a Senator who did not hear it because he was outside of the Chamber? In other words, where are we to draw the line? If there be one official announcement by unanimous consent that is to be vacated on account of courtesy merely, a most highly estimable private virtue, then where are you to draw the line? Are you to draw it merely where a Senator was engaged in conversation, and therefore did not hear, or are you to draw it where a Senator is incapacitated in one ear and had that ear presented, and therefore did not hear, or are you to draw it because a Senator was engaged in necessary committee work and therefore was not present? Where are you to draw it and within what limit or time?

Mr. LODGE. If the Senator will allow me, I will tell him where the Senate has drawn the line. It has always drawn the line on a Senator who was present and who said to the Senate that he had not heard or that he had not been recognized in time, but not on a Senator who was absent from the Chamber. He was bound by the consent, because he was absent at his own risk when he knew it was likely to come up.

Mr. WILLIAMS. I would be glad to see that rule established. I want to know what is the rule.

Mr. LODGE. If a unanimous-consent agreement was adopted, and the Senator from Mississippi failed for any reason to hear it, and then it was brought to his attention and he should rise and say to the Chair, "I have not heard what was being asked; I ask that it be resubmitted," I think under the uniform practice of the Senate it would be resubmitted.

Mr. WILLIAMS. That would suit me remarkably well. What I want to have is a uniform rule on the subject.

Mr. KENYON. Mr. President, the Senator from North Dakota [Mr. GRONNA] was recognized and made the suggestion of the absence of a quorum.

The PRESIDENT pro tempore. The Chair did not recognize the Senator from North Dakota on that statement. The Chair did not even hear the statement. It is not too late, if the Senator now makes it.

Mr. GRONNA. I suggest the want of a quorum.

Mr. LODGE. I move that the Senate adjourn.

The motion was agreed to, and (at 8 o'clock and 14 minutes p. m.) the Senate adjourned until to-morrow, Saturday, January 11, 1913, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

FRIDAY, *January 10, 1913.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

We bless Thee, our Father in heaven, that though there are wide differences of opinion among men upon questions of theology, there is great unanimity of opinion upon pure religion and the questions of ethics. Since long before the ten great commandments were written on the tables of stone they were written in the hearts of men, so that above the value of wealth, of position, of everything else in this world a premium is set upon honesty, integrity, sobriety, and virtue. There is nothing stronger than faith, purer than virtue, warmer than love, nor more enduring than hope, and we pray that these things may live and grow until pure and undefiled religion shall be shed abroad in every heart. In the spirit of the Lord Jesus Christ. Amen.

The Journal of the proceedings of yesterday was read and approved.

RESIGNATION OF REPRESENTATIVE HANNA.

The SPEAKER laid before the House the following communication:

FARGO, N. DAK., *January 2, 1913.*

Hon. CHAMP CLARK,
Speaker of the House of Representatives, Washington, D. C.

MY DEAR SIR: This is to advise you that I have this day tendered to Hon. John Burke, governor of North Dakota, my resignation as a Representative in Congress from the State of North Dakota; said resignation to take effect January 7, 1913.

Sincerely, L. B. HANNA.

CHANGE OF REFERENCE.

By unanimous consent, the Committee on Military Affairs was discharged from the further consideration of House Documents Nos. 1226 and 1228, Sixty-second Congress, estimates for appropriations for Benecia Arsenal, Benecia, Cal., and the same were referred to the Committee on Appropriations.

THE HALL OF THE HOUSE.

Mr. FITZGERALD. Mr. Speaker, I ask unanimous consent for the present consideration of the following resolution, which I send to the Clerk's desk.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

House resolution 771.

Resolved, That the Superintendent of the Capitol Building and Grounds is hereby authorized, under the direction and supervision of the commission, to rearrange and reconstruct the Hall of the House of Representatives and, within a total expenditure not exceeding $25,000, to procure and install the necessary furniture and furnishings in the Hall of Representatives for accommodating and seating the Members of the House of the Sixty-third Congress, and to do all such other things, under said direction and supervision and within said limit of cost, as may be necessary in the preparation of the Hall of Representatives for the assembling of the Sixty-third Congress.

The SPEAKER. Is there objection to the present consideration of this resolution?

There was no objection.

Mr. FOSTER. I would like to ask if this contemplates the removal of the desks.

Mr. FITZGERALD. Mr. Speaker, I desire to make this statement to the House: The present House has 396 Members, and now there are 400 seats and desks. The next House will have 435 Members. Several weeks ago, at my suggestion, the Superintendent of the Capitol Building and Grounds prepared a number of plans for rearrangement of the House, experimentally, to accommodate all of the Members. The commission to rearrange and reconstruct the Hall, under a statute passed a few years ago, met and had these various plans before it and decided to put in temporarily, or experimentally, benches without desks. It will require the rearrangement of the risers upon which the present desks are located. If the matter is to be done within the month of March, it is necessary that the superintendent be authorized to make the necessary contracts for the construction of the seats at once. It was believed desirable during the extra session to try out whether the House could do business permanently without desks, and it is believed to be important to have that trial before directions are given to make the permanent changes in the Hall directed some years ago. The purpose of this resolution is to provide for the rearrangement of the House so that during the extra session of the Sixty-third Congress which is to be held the business of the House will be transacted without desks, with an arrangement by which there will be two tables placed in the fore part of the Hall, at which men in charge of bills shall be expected to take their place at such times.

Mr. FOSTER. My recollection is that the plan submitted at one time was that there should be tables on either side of the aisle, back in the body of the Hall.

Mr. FITZGERALD. The particular location is somewhat indefinite. The plan contemplates taking out the first row, at present, of these seats, and desks will be located wherever, after the work has progressed, it is deemed most desirable and convenient to have them.

Mr. GARRETT. If the gentleman will permit, the tentative plan does not contemplate now any change in the walls?

Mr. FITZGERALD. None whatever. But it will be necessary to arrange the risers or steps in order to bring the Members as closely together as is possible with such an arrangement, and if no change were made in them it would be impossible to tell whether there would be any advantage in having them more compactly together. It is necessary, in order to make arrangements for the next Congress, that work begin at once on whatever is to be done.

Mr. STEPHENS of Texas. Will the gentleman permit a question? Will the gentleman be willing to add a line as to better ventilation?

Mr. FITZGERALD. It is impossible within the time that will elapse to do anything toward changing the ventilation of the House.

Mr. STEPHENS of Texas. Allow me to suggest to the gentleman that I think I could provide better ventilation by shutting all the doors here and giving us direct ventilation.

Mr. FITZGERALD. I am basing my statement largely on the technical advice of men who have made an exhaustive study of this Chamber. At any rate, it would require such alterations in the Chamber as could not be possibly made in the time available.

Mr. STEPHENS of Texas. Would there be any objection to changing the ventilation so as to protect the health of the Members?

Mr. FITZGERALD. I am heartily in favor of doing so, and I shall be very glad to have the gentleman bring his suggestions to the commission.

Mr. STEPHENS of Texas. I believe we have a Committee on Acoustics and Ventilation, have we not? Possibly it will be proper to refer it to that committee.

Mr. FITZGERALD. I believe that committee no longer exists.

Mr. STEPHENS of Texas. There should be such a committee.

Mr. FITZGERALD. It finished its labors and has been abolished.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

On motion of Mr. FITZGERALD, a motion to reconsider the vote whereby the resolution was passed was laid on the table.

ORDER OF BUSINESS.

Mr. RUSSELL. Mr. Speaker, this is, as I understand, Private Calendar day, set apart for pension business. I desire to submit this offer for unanimous consent: Inasmuch as the Post Office appropriation bill is pending and the gentlemen in charge of it are anxious to continue with it, I ask unanimous consent that the day following the completion of that bill, provided it does not fall on Monday or Wednesday, shall be set aside as a substitute for to-day, with all of the business that could come before the House to-day permissible on that day.

The SPEAKER. This is Private Calendar day, with the preference in favor of the pension committees, and the gentleman from Missouri [Mr. RUSSELL] submits a request for unanimous consent that the first day after the Post Office appropriation bill has been completed, provided it does not fall on Monday or Wednesday, shall be substituted for this day. Is there objection?

Mr. MANN. Reserving the right to object, Mr. Speaker, would not the gentleman make his request that only pension bills on the Private Calendar be considered on that day?